

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTEENTH REGION**

HOSPITAL CORPORATION OF AMERICA RESEARCH MEDICAL CENTER

Employer

and

Case 17-RC-12076

NURSES UNITED FOR IMPROVED PATIENT
CARE, FEDERATION OF NURSES AND HEALTH
PROFESSIONALS/AFT, AFL-CIO

Petitioner

HOSPITAL CORPORATION OF AMERICA RESEARCH MEDICAL CENTER

Employer

and

Case 17-RC-12077

UNITED STEELWORKERS OF AMERICA,
AFL-CIO, CLC

Petitioner

SUPPLEMENTAL DECISION

Dated: July 2, 2003

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National Labor Relations Board
Seventeenth Region
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On November 4, 2002, the National Labor Relations Board issued an Order granting the Employer's Requests for Review of the two Decisions and Direction of Elections issued on October 1, 2002, in the above captioned cases, and remanded the cases to the Regional Director for re-examination of the unit scope issues. The prior Decisions directed elections in separate bargaining units of registered nurses and non-professional employees employed at Health Midwest Research Hospital (Research Hospital) located at 2316 East Meyer Boulevard, Kansas City, Missouri. The November 4, 2002 remand expressed the following concerns regarding the two October 1, 2002 Decisions: 1) reliance upon a single-facility presumption to determine unit scope; 2) perceived inconsistencies in the scope of the two bargaining units found appropriate although the single-facility presumption was used to determine the scope of both bargaining units; 3) the belief that groups of employees employed within the Research Hospital building at 2316 E. Meyer Boulevard, Kansas City, Missouri, were arbitrarily excluded from the bargaining units; and 4) the belief that some health care operations or services in the Health Midwest system were arbitrarily included while other health care operations or services were arbitrarily excluded from the bargaining units.

After the November 4, 2002, remand issued, the hearing was reopened and additional evidence was submitted on February 18, 19, and 20, 2003. The hearing closed on February 20, 2003, and the parties were given until April 28, 2003, to submit additional post-hearing briefs. The parties were requested to brief the applicability of rules regarding bargaining units in acute care hospitals, the application of the single-facility presumption, and multi-facility bargaining units to determine the scope of the bargaining units.

Effective March 31, 2003, Health Midwest, the corporate parent of Research Hospital, sold the entirety of its operations to Hospital Corporation of America, Inc. (HCA), a for-profit health care provider. On April 15, 2003, amended petitions were filed to reflect the name of the corporation that now owns and operates the acute care hospital known as Research Hospital or Research Medical Center (called Research Hospital in this Supplemental Decision). Health Midwest and HCA are referred to here as the Employer.

After the March 31, 2003, sale, attorneys for the Employer informed the Regional office in writing that the sale to HCA did not require a further reopening of the record. The Employer seeks a decision based on the evidence submitted during the initial hearing in 2002, and the February 2003 hearing held pursuant to the Board's November 4, 2002, remand. There is no contention or evidence that since the March 31, 2003 sale, any material changes have been made in the operation of the health care services formerly owned and operated by Health Midwest. In the event that changes are made in the future which the Employer believes affect the scope of the bargaining units found appropriate here, those matters may be addressed at that time, either through a unit clarification petition or bargaining.

In this Supplemental Decision, the term "Health Midwest" is used when discussing the evidence, although all former Health Midwest operations are now owned and operated by HCA.

I. DESCRIPTION OF BARGAINING UNITS FOUND APPROPRIATE

A. REGISTERED NURSES UNIT: CASE 17-RC-12076

All full-time and regular part-time registered nurses including graduate nurses, nurse practitioners, PRN nurses, charge nurses, and board runners employed by Hospital Corporation of America Research Medical Center at the acute care hospital known as Research Hospital which consists of a main building at 2316 E. Meyer Boulevard, Kansas City, Missouri, the Transplant Institute including its clinic located at 6400 Prospect, Kansas City, Missouri, the Communicative Disorders Center including its clinic located at 2300 E. Meyer Boulevard, Kansas City, Missouri, the Nursing College located at 2300 East Meyer Boulevard, Kansas City, Missouri, and the Child Development Center located on the hospital campus, but excluding employees employed in the Cancer Institute, SurgiCenter, Patient Services-Education Department, Research-Belton Hospital, Trinity Family Medicine Center, the Diabetes Center of Health Midwest at its several

locations, The Psych Center, and all other employees, guards and supervisors as defined in the Act.

B. NON-PROFESSIONAL UNIT: CASE 17-RC-12077

All full-time and regular part-time non-professional employees except for technical employees, skilled maintenance employees, business office clerical employees and guards employed by Health Midwest, or by Hospital Corporation of America Research Medical Center at the acute care hospital known as Research Hospital which consists of a main building at 2316 E. Meyer Boulevard, Kansas City, Missouri, the Transplant Institute including its clinic located at 6400 Prospect, Kansas City, Missouri, the Communicative Disorders Center including its clinic located at 2300 E. Meyer, Kansas City, Missouri, the Nursing College located at 2300 E. Meyer Boulevard, Kansas City, Missouri, and the Child Development Center located on the hospital campus, but excluding employees employed in the Cancer Institute, SurgiCenter, Patient Services-Education Department, Research-Belton Hospital, Trinity Family Medicine Center, the Diabetes Center of Health Midwest at its several locations, The Psych Center, and all other employees, guards and supervisors as defined in the Act.

II. EXPLANATION OF SUPPLEMENTAL DECISION

A. APPROACH

In the Supplemental Decision, as well as in the initial decisions that issued on October 1, 2002, the initial determination is which health care services or operations are properly considered within the definition, parameters, or scope of the acute care hospital known as Research Hospital. After Research Hospital itself is identified and defined, the secondary determination is whether a bargaining unit limited to employees employed at Research Hospital is appropriate or whether a “multi-facility” unit that combines Research Hospital employees with employees employed at other facilities, including other acute care hospitals and other non-acute care facilities, is appropriate.

In the Supplemental Decision I have: 1) determined that the acute care hospital known as Research Hospital is not limited to its main building located at 2316 East Meyer Boulevard, Kansas City, Missouri; 2) identified the parameters of the acute care hospital known as Research Hospital, including those health care services that are part of the acute care hospital that are located in part or in whole outside the hospital's main building at 2316 East Meyer Boulevard; and 3) set forth the basis for the determination that such health care services are inherently part of the acute care hospital known as Research Hospital.

Further, in reliance upon The National Labor Relations Board's Final Rule on Collective Bargaining Units in the Health Care Industry, 29 CFR section 103.30; 54 Fed. Reg. No. 76, 284 NLRB 1580, 1596 (1989) (the Rule), I reaffirm the determination set forth in the October 1, 2002 Decisions, that the scope of the appropriate bargaining units is co-extensive with Research Hospital. In finding that bargaining units limited to the scope of the acute care hospital known as Research Hospital are appropriate, I do not rely upon the single-facility presumption because: 1) the Rule itself establishes a presumption that a *single acute care hospital* is the appropriate bargaining unit; 2) there appears to be some confusion in the law regarding the definition of a "single-facility" and the application of the "single-facility" presumption when an entity is comprised of more than one building; and 3) it is unnecessary to resolve any confusion regarding the applicability of the "single-facility" presumption to entities consisting of multiple buildings as the authority provided by the Rule overrides any application of a "single-facility" presumption that does not define a "single-facility" as co-extensive with a single acute care hospital, regardless of the number or arrangement of the buildings the acute care hospital occupies.

In finding that Research Hospital is the scope of the appropriate bargaining unit, I reject various arguments raised by the Employer and find that: 1) Medicare regulations determining which health care services qualify as "hospital-based" services for purposes of Medicare reimbursement and joint accreditation of hospitals by the Joint Commission on Accreditation of Hospitals (JCAH) are not determinative of the scope of the

appropriate bargaining unit; 2) Research Hospital does not include Research-Belton Hospital, Trinity Family Medicine Center, or any of the five offices of the Diabetes Center of Health Midwest; 3) Research Hospital and Research Psychiatric Center (Psych Center) do not constitute a “single-facility” and the Research Hospital “campus” does not constitute a “single-facility” or an appropriate bargaining unit(s); and 4) a “multi-facility” bargaining unit combining the employees of Research Hospital with the employees of any other entity is not appropriate.

I also reject the Employer’s contention that it is necessary to determine whether the following five corporations are single employers in order to determine whether a multi-facility bargaining unit is appropriate: Health Midwest, Health Midwest Central Region, Hospital Corporation of America Research Medical Center, Baptist Lutheran Medical Center (Baptist Hospital), and Research Psychiatric Center (Psych Center). See Visiting Nurses Association of Central Illinois, 324 NLRB 55 (1997) (“even if the Employer and MMC are a single employer, we find, in agreement with the Regional Director, that the petitioned-for single-facility healthcare unit is presumptively appropriate....”); Mercy Hospitals of Sacramento, Inc., 217 NLRB 765 (1975). Also see Mercy Hospital of Buffalo, 336 NLRB No. 134 (2001), for the application of single-employer analysis in a health care setting.

B. IDENTIFICATION OF CHANGES MADE IN SUPPLEMENTAL DECISION FROM OCTOBER 1, 2002 DECISIONS

The Supplemental Decision *differs from the October 1, 2002, Decisions in that I now find that the acute care hospital known as Research Hospital includes: 1) the Communicative Disorders Center and 2) Research Hospital Nursing College (Nursing College)*, and that employees employed in these services are included in the bargaining units of employees of Research Hospital.

My decision that the Communicative Disorders Center is part of Research Hospital rather than a separate entity is based upon additional evidence submitted by the Employer at the February 2003 hearing which establishes: the Communicative Disorders Center has a

substantial and permanent presence within Research Hospital's main building at 2316 East Meyer Boulevard; and employees of the department regularly work within Research Hospital, and are substantially involved in direct care of acute care patients in Research Hospital; the Communicative Disorders Center and Research Hospital appear functionally integrated so as to constitute one entity; and the connection between the Communicative Disorders Center and Research Hospital is primary and unique.

My reversal of the initial decision that the Nursing College is a separate entity from Research Hospital is based upon a re-examination of the limited Board law available on the issue of when, if ever, a nursing college (or medical college) is a separate entity from the acute care hospital with which it is affiliated.

The Communicative Disorders Center employs no registered nurses and employs three employees classified as non-professional employees (two full-time and one on-call employee). The Nursing College employs approximately 29 employees classified as registered nurses and approximately 4 employees classified as non-professional employees. Accordingly, the effect of these changes to the initial determinations of unit scope is to add approximately 29 eligible voters (all employed at the Nursing College) to the approximately 700 eligible voters in the registered nurses bargaining unit and to add approximately 6-7 eligible voters (4 employed at the Nursing College and 3 employed in the Communicative Disorders Center department) to the approximately 600 eligible voters in the non-professional employees bargaining unit.

C. IDENTIFICATION OF ASPECTS OF INITIAL DECISIONS THAT ARE NOT CHANGED IN SUPPLEMENTAL DECISION

1. SERVICES INCLUDED AS PART OF RESEARCH HOSPITAL

After the review initiated by the November 4, 2002, remand, I *reaffirm* the finding that employees employed in the following operations, departments, or services are included as part of the acute care hospital known as Research Hospital and are therefore *included*

in the petitioned for bargaining units: 1) the Transplant Institute including its outpatient clinic located at 6400 Prospect; and 2) The Child Development Center.

2. SERVICES EXCLUDED/SEPARATE FROM RESEARCH HOSPITAL

I *reaffirm* my prior findings that employees employed in the following operations, departments, or services are separate entities from the acute care hospital known as Research Hospital: 1) the main office of the Diabetes Center of Health Midwest located at 2188 E. Meyer Boulevard, Kansas City, Missouri; the Diabetes Center of Health Midwest office at 2400 R.D. Mize Road, Independence, Missouri near Health Midwest's MCI Hospital; the Diabetes Center of Health Midwest office at 12200 West 106th Street, Overland Park, Kansas near Health Midwest's Overland Park Regional Hospital; and the Diabetes Center of Health Midwest offices in Health Midwest hospitals located in Lexington, Missouri and in Chillicothe, Missouri; 2) Research-Belton Hospital located at 17065 South 71 Highway, Belton, Missouri; 3) Trinity Family Medicine Center located at 2900 Baltimore, Kansas City, Missouri; 4) The Psych Center located at 2323 East 63rd Street, Kansas City, Missouri; and 5) Baptist Hospital located at 6601 Rockhill Road, Kansas City, Missouri.

Further, I *reaffirm* my prior finding that the five above named health care operations, departments or services are not properly included in a multi-facility bargaining unit with employees employed in the acute care hospital known as Research Hospital.

3. PATIENT CARE SERVICES / RURAL PHYSICIANS NETWORK

I *reaffirm* my prior finding that: 1) all employees classified as "Patient Care Services-Education Department" are excluded from the scope and the composition of the acute care hospital known as Research Hospital; and 2) that employees in the Rural Physicians Network are included in the composition of the acute care hospital known as Research Hospital.

I note that operations of the Rural Physicians Network are *entirely housed* within Research Hospital's building at 2316 East Meyer Boulevard and that *placement of employees employed in this department involve unit composition issues rather than multi-facility or multi-location issues.*

D. CONCERNS EXPRESSED BY THE BOARD IN ITS REMAND

1. UNIT SCOPE IS IDENTICAL IN BOTH UNITS

The scope of the separate bargaining units of registered nurses and non-professional employees found appropriate in the Supplemental Decision is identical, i.e. the acute care hospital known as Research Hospital. I have found that Research Hospital's operations include the main building at 2316 East Meyer Boulevard, Kansas City, the operations of the Transplant Institute including its outpatient clinic at 6400 Prospect, Kansas City, Missouri, the operations of the Communicative Disorders Center including its outpatient clinic at 2300 East Meyer Boulevard, Kansas City, Missouri, and the Child Development Center which is located in a separate stand-alone building but which uses the address of the Research Hospital's main building at 2316 East Meyer Boulevard.

Although the scope of the two units is identical, some departments or services within Research Hospital do not employ employees classified as registered nurses and other departments or services within Research Hospital do not employ non-professional employees. For example, no registered nurses are employed in the Child Development Center or the Communicative Disorders Center. As a further example, I have found that no non-professional employees are employed in the Rural Physicians Network department of Research Hospital.

2. SCOPE OF UNIT DEFINED BY DEFINITION OF RESEARCH HOSPITAL

The scope of the bargaining unit is defined by the scope of operations found to be part of the acute care hospital known as Research Hospital. I find that operations included within

Research Hospital are located in more than the main hospital building at 2316 East Meyer Boulevard, Kansas City, Missouri. Thus, contrary to the concern expressed on page 2 of the November 4, 2002, remand, the bargaining units found appropriate here do not include “buildings outside Research Hospital”. Rather, the Child Development Center located in a freestanding building with no separate address located within a block or two of the hospital’s main building at 2316 East Meyer Boulevard building, the Transplant Institute’s outpatient clinic located at 6400 Prospect, the Communicative Disorders Center’s outpatient clinic located at 2300 East Meyer Boulevard, and the Nursing College located at 2300 East Meyer Boulevard, are included in the bargaining unit because I have determined that those services and operations are inherently part of the acute care hospital known as Research Hospital even though these services and operations, at least in part, are housed in buildings separate from the main hospital building at 2316 East Meyer Boulevard.

3. EMPLOYEES EMPLOYED WITHIN RESEARCH HOSPITAL’S MAIN BUILDING ARE NOT IMPROPERLY EXCLUDED

The only groups of employees employed within Research Hospital’s main building at 2316 E. Meyer Boulevard, Kansas City, Missouri who are excluded from the bargaining units are: 1) employees of The Cancer Institute; 2) employees of The SurgiCenter; and 3) some employees of the Patient Care Services-Education Department.

Both The Cancer Institute and The SurgiCenter are joint ventures between Health Midwest and other entities. The parties stipulated that employees of The Cancer Institute and of The SurgiCenter have a different employer and a separate community of interest from employees employed by Research Hospital. The parties stipulated that the employees of those two services who work within the 2316 East Meyer Boulevard Building are properly excluded from the bargaining units of employees of Research Hospital. See Mercy Hospital of Buffalo, 336 NLRB No. 134 (2001) (Board found that new health care service operated by joint venture was not single employer with acute care hospital and that the new health care service was not included in existing bargaining unit of registered nurses employed at the acute care hospital.)

With regard to the approximately 19 employees of the Patient Care Services-Education Department, all of whom are registered nurses, I find that all employees of this department, including the 1 employee who actually appears to work exclusively at Research Hospital, the 5 additional employees who are nominally “based” at Research Hospital, as well as the 13 other departmental employees who are nominally based at various Health Midwest acute care hospitals other than Research Hospital, are excluded from the bargaining unit of registered nurses employed at Research Hospital. In this regard, I find that the Patient Care Services-Education Department, either as a whole or in part, is not part of Research Hospital. In making this determination I note: 1) the Patient Care Services-Education Department and its employees are under separate management from Research Hospital; 2) the work of Department employees is not limited to either Research Hospital locations or to Research Hospital employees but includes all acute care hospitals within the Health Midwest system; 3) the Department employees do not interchange or share common supervision with employees of Research Hospital; 4) there is no evidence that most of the Department employees ever work in Research Hospital; and 5) there is no evidence that any established bargaining unit of registered nurses employed in an acute care hospital in the Health Midwest health care system includes Department employees in the bargaining unit. See PECO Energy, Inc., 322 NLRB 1074, 1081 fn. 2 (1997) (employees who travel to multiple separate business units operated by an employer are excluded from bargaining units limited in scope to each separate unit, even when individual traveling employee spends a majority of their time at one specific business unit).

4. EXPLANATION OF VARIANCES IN UNIT DESCRIPTION BETWEEN BARGAINING UNITS

The scope of the two bargaining units is identical, i.e. the scope of the acute care hospital known as Research Hospital. However, the unit description of the non-professional employees unit includes the names of both Health Midwest and the Hospital Corporation of America Research Medical Center because, at least prior to the sale to HCA, all employees employed in the Central Distribution/Warehouse Department and in the Print

Shop, both located in their entirety within the 2316 East Meyer Boulevard building, are on a Health Midwest payroll rather than on the same payroll as the other employees of Research Hospital. Health Midwest does not employ any of the registered nurses who work within the 2316 East Meyer Boulevard building. Accordingly, there is no reason to include Health Midwest in the description of the bargaining unit of registered nurses.

No party sought review of the October 1, 2002 Decision to include employees of Health Midwest employed at the 2316 East Meyer Boulevard building in the Central Distribution/Warehouse and Print Shop in the bargaining unit of non-professional employees.

III. CURRENT POSITIONS OF THE PARTIES REGARDING UNIT SCOPE

A. REGISTERED NURSES (Case 17-RC-12076)

The Nurses United For Improved Patient Care, Federation of Nurses and Health Professionals/AFT, AFL-CIO, the Petitioner in Case 17-RC-12076, (referred to here as Petitioner-Nurses) seeks a bargaining unit of registered nurses employed at the acute care hospital known as Research Hospital. The Petitioner-Nurses contends that Research Hospital is located entirely in the single building located at 2316 East Meyer Boulevard, Kansas City, Missouri, and that the appropriate bargaining unit is limited to registered nurses employed at the 2316 East Meyer Boulevard building. The Petitioner-Nurses contends that all functions performed outside the building located at 2316 East Meyer Boulevard are not part of Research Hospital and that employees performing such functions should be excluded from the bargaining unit.

At the initial hearing which closed in June 2002, the Petitioner-Nurses, in agreement with the Employer, stipulated that registered nurses employed at the Transplant Institute including the Transplant Institute outpatient clinic located at 6400 Prospect were properly included in the bargaining unit. However, at the February 2003 hearing, the Petitioner-Nurses withdrew from this stipulation and now contends that none of the operations of the Transplant Institute are part of Research Hospital and that registered nurses employed

at the Transplant Institute should be excluded from the bargaining unit of registered nurses employed at Research Hospital.

B. NON-PROFESSIONAL EMPLOYEES (Case 17-RC-12077)

United Steelworkers of America, AFL-CIO, CLC, the Petitioner in Case 17-RC-12077, (referred to herein as Petitioner-Steelworkers), seeks a bargaining unit of non-professional employees employed at the acute care hospital known as Research Hospital, and would define that unit as all non-professional employees employed in the 2316 East Meyer Boulevard, Kansas City, Missouri building. The Petitioner-Steelworkers contends that Research Hospital is limited to the functions performed in the building located at 2316 East Meyer Boulevard, and that non-professional employees employed at any location other than 2316 East Meyer Boulevard must be excluded from the bargaining unit.

Thus, both Petitioners take identical positions regarding the definition of Research Hospital and the scope of the acute care hospital known as Research Hospital, i.e. that the operations of the acute care hospital are limited to the operations contained in a single building located at 2316 East Meyer Boulevard, Kansas City, Missouri.

C. EMPLOYER

1. Approach Suggested By the Employer

At the February 2003 hearing the Employer asserted that in order to determine the appropriate bargaining unit the following issues must be addressed in order: 1) the definition or scope of Research Hospital itself; 2) whether Research Hospital is itself a “single-facility” or whether Research Hospital must be combined with any other entity to constitute a “single-facility”; and 3) whether a “single-facility” or “multi-facility” bargaining unit is appropriate. In addition, on remand, the Employer asserts that it is necessary to make a specific finding regarding whether Health Midwest, Health Midwest Central Region, Hospital Corporation of America Research Medical Center, Baptist Lutheran Medical Center, and Research Psychiatric Center are single employers in order

to determine whether the employees of Research Hospital must be combined in a “multi-facility” bargaining unit with the employees of the Psych Center and Baptist Hospital.

2. Employer’s Definition of Research Hospital

At both the initial hearing and the February 2003 hearing, the Employer contended that Research Hospital is not limited to the building located at 2316 E. Meyer Boulevard, Kansas City, Missouri, but includes the following services and functions located on the “campus” of Research Hospital: 1) Transplant Institute located at 6400 Prospect; 2) Communicative Disorders Center located at 2300 East Meyer Boulevard; 3) Nursing College located at 2300 East Meyer Boulevard; 4) the Child Development Center (no separate address from the 2316 East Meyer Boulevard building but located in a separate building); and 5) the Diabetes Center of Health Midwest office located at 2188 East Meyer Boulevard, Kansas City, Missouri.

The Employer also asserts that “Research Hospital” includes the following “*off campus*” services: 1) a second acute care hospital known as Research-Belton Hospital located at 7065 S. 71 Highway, Belton, Missouri, approximately 15 miles south of the 2316 E. Meyer Boulevard building, 2) Trinity Family Medicine Center located at 2900 Baltimore, Kansas City, Missouri, approximately 7 miles from the 2316 East Meyer Boulevard Hospital; and 3) two additional locations of the Diabetes Center of Health Midwest, one located at 2400 R.D. Mize Road, Independence, Missouri, on the campus of Health Midwest’s acute care hospital MCI Hospital in Independence, Missouri, and a second located at 12200 W. 100th Street, Overland Park, Kansas on the campus of Health Midwest’s acute care hospital Overland Park Regional Hospital in Overland Park, Kansas. The Employer does not include within the definition of Research Hospital the remaining two locations of the Diabetes Center of Health Midwest at Health Midwest’s Lafayette Regional Health Center in Lexington, Missouri and at Health Midwest’s Hedrick Medical Center in Chillicothe, Missouri.

Thus, the Employer’s definition of “Research Hospital” includes health services located in multiple buildings, including “off-campus” services located miles away from the main

building of Research hospital located at 2316 East Meyer Boulevard, Kansas City, Missouri.

During the February 2003 hearing the parties stipulated that the acute care hospital known as Research Hospital does not include the Psych Center psychiatric hospital located at 2323 East 63rd Street, Kansas City, Missouri on the Research Hospital “campus”. Accordingly, the Employer does not include the Psych Center in its definition of Research Hospital.

3. Employer’s Definition of Single-Facility

At the February 2003 hearing, the Employer contended that Research Hospital (as broadly defined by the Employer) and the Psych Center hospital located at 2323 East 63rd Street, Kansas City, Missouri on the Research Hospital “campus” were a “single-facility”. The Employer’s current definition of a “single-facility” unit is identical to its definition of a “Research Hospital Campus” unit, which includes most (but not all) Health Midwest operations located in the several block area surrounding Research Hospital’s main building at 2316 East Meyer Boulevard.

Thus, the “single-facility”/“Research Hospital Campus” unit, as described by the Employer, includes services located off the Research Hospital campus (Research Belton-Hospital, Trinity Lutheran Family Medicine Center, and the Diabetes Center of Health Midwest locations in Independence, Missouri (on the campus of MCI Hospital) and in Overland Park, Kansas (on the campus of Overland Park Regional Hospital), but excludes employees in Health Midwest’s Business and Industry Health Group located at 6400 Prospect (in the same building as the Transplant Institute’s outpatient clinic) and employees employed at Health Midwest’s corporate offices located within a block or two of Research Hospital’s main building at 2316 East Meyer Boulevard.

4. Employer's Definition of Multi-Facility Bargaining Unit

The Employer contends that a "multi-facility" bargaining unit consisting of the "single-facility"/"Research Hospital Campus" as defined by the Employer plus Baptist Hospital located at 6601 Rockhill, Kansas City, Missouri, approximately one mile away from Research Hospital's main building at 2316 East Meyer Boulevard, is the appropriate bargaining unit.

Thus, the Employer's current position regarding the appropriate "multi-facility" bargaining unit is identical to its position taken at the initial hearing in which the Employer asserted that a "Central Region" multi-facility bargaining unit consisting of most (but not all) Health Midwest health care services administered under the Health Midwest Central Region holding company was the appropriate bargaining unit.

Thus, at neither the initial hearing nor at the February 2003 hearing did the Employer seek to include within the "Central Region" or "multi-facility" bargaining unit its nursing home, Trinity Lutheran Manor Nursing Home located at 9700 W 62nd Street, Merriam, Kansas which is administered under its Central Region. Also the Employer does not seek the inclusion of two of the five locations of the Diabetes Center of Health Midwest (the Diabetes Center locations at Health Midwest acute care hospitals in Lexington, Missouri and in Chillicothe, Missouri) although the Diabetes Center of Health Midwest is administered under the Central Region. The two locations of the Diabetes Center of Health Midwest that the Employer does seek to include within its "Central Region" multi-facility bargaining unit are located on the campus of Health Midwest acute care hospitals that are not administered by Health Midwest's Central Region (i.e. the Diabetes Center location in Independence, Missouri on the campus of MCI Hospital, a hospital which is administered by Health Midwest Independence Region, and in Overland Park, Kansas on the campus of Overland Park Regional Hospital, a hospital administered by Health Midwest Johnson County Region).

5. Employer's Secondary Positions Regarding Appropriate Units

At the February 2003 hearing, the Employer stated two secondary or "fall-back" positions regarding the appropriate bargaining unit in the event that the "multi-facility"/ "Central Region" bargaining unit proposed by the Employer is not found appropriate.

a) "Single-Facility"

The Employer contends that, in the event that the Employer's proposed "multi-facility"/ "Central Region" bargaining unit is not appropriate, a "single-facility"/ "Research Hospital Campus" unit consisting of Research Hospital (as defined by the Employer) and the Psych Center is appropriate.

The only difference between the Employer's definition of a "multi-facility"/ "Central Region" unit and its "single-facility"/ "Research Hospital Campus" unit is that the latter drops the inclusion of Baptist Hospital from the bargaining unit.

b) Research Hospital Unit

If its "single-facility"/ "Research Hospital Campus" unit is not appropriate, the Employer contends that the smallest appropriate bargaining unit is Research Hospital as defined by the Employer. Thus, the Employer would include within the Research Hospital bargaining unit services which are located several miles away from Research Hospital's main building at 2316 East Meyer Boulevard (i.e. Research-Belton Hospital, the Trinity Family Medicine Center, and two locations of the Diabetes Center of Health Midwest located in Independence, Missouri (on the campus of MCI Hospital) and in Overland Park, Kansas (on the campus of Overland Park Regional Hospital).

IV. STIPULATIONS OF PARTIES

During the February 2003 hearing the Employer and both Petitioners entered into the following stipulations:

1. On Research Medical Center campus there is an acute care hospital known as Research Hospital; Research Hospital meets the Board definition of “acute care hospital”; and, at a minimum, Research Hospital includes the building located at 2316 East Meyer Boulevard, Kansas City, Missouri.
2. Research Psychiatric Center (Psych Center) is a psychiatric hospital within the Board’s definition and is a separate entity from the acute care hospital known as Research Hospital.
3. Baptist Medical Center (Baptist Hospital) is an acute care hospital within the Board’s definition of the term acute care hospital, and Baptist Hospital is a separate acute care hospital from the acute care hospital known as Research Hospital.
4. In the event that Research-Belton Hospital is not considered a part of the acute care hospital known as Research Hospital, Research-Belton Hospital is a separate acute care hospital within the Board’s definition of the term acute care hospital.
5. The Cancer Institute located in the Research Hospital building at 2316 East Meyer Boulevard is not part of the acute care hospital known as Research Hospital because it is a joint venture between Health Midwest and another entity and employees employed in The Cancer Institute have a different employer and a separate community of interest from employees employed by the acute care facility known as Research Hospital.
6. The SurgiCenter located in the Research Hospital building at 2316 East Meyer Boulevard is not part of the acute care hospital known as Research Hospital because it is a joint venture between Health Midwest and another entity and employees employed in the SurgiCenter have a different employer and a separate community of interest from employees employed by the acute care facility known as Research Hospital.
7. The Health Midwest Business and Industry Health Group, which maintains a main office at 6400 Prospect and other offices at various locations in South Kansas City, does

not employ employees that are properly included in either the bargaining unit of registered nurses or the bargaining unit of non-professional employees employed in the acute care facility known as Research Hospital.

V. REVIEW OF EMPLOYER'S OPERATIONS

A. HEALTH MIDWEST

From 1991 until March 31, 2003, Health Midwest, a public benefit corporation, owned and operated a variety of health care corporations and health care services within the Kansas City metropolitan area and in smaller cities near the Kansas City metropolitan area. Effective March 31, 2003, Health Midwest sold the entirety of its operations to HCA, a for-profit health care provider. HCA seeks a decision based on the evidence previously submitted during the initial hearing held in 2002, and the February 2003 hearing held pursuant to the Board's remand. HCA concedes that after the March 31, 2003 sale, no material changes, other than the setting of initial terms of employment, were made in the operation of the health care services formerly owned and operated by Health Midwest.

The Employer describes Health Midwest as "the Kansas City area's most complete family of hospitals and health care services...encompassing 13 general acute care, rehabilitation and behavioral health centers; 2,483 licensed beds; 2,500 physicians; 12,000 employees; numerous outpatient facilities and medical office buildings; and a broad spectrum of other vital health care services". Health Midwest's operations include 12 acute care hospitals, a psychiatric hospital, a nursing college, and various other health care services. Research Hospital is one of the 12 acute care hospitals owned and operated by Health Midwest. Health Midwest's promotional literature refers to the operation of 13 acute care hospitals, a figure that includes the psychiatric hospital (Psych Center) located at 2323 East 63rd Street, Kansas City, Missouri on the "campus" of Research Hospital, and counts Research-Belton Hospital located in Belton, Missouri approximately 15 miles away from Research Hospital as a separate acute care hospital from Research Hospital.

B. THREE HEALTH MIDWEST REGIONS

In 2001, Health Midwest created three corporate holding companies to provide an intermediate level of management and organization between Health Midwest and its various health care services. These three holding companies are: Health Midwest-Central (herein called Central Region); Health Midwest-Independence Region (sometimes referred to as “eastern Jack” in reference to Jackson County, Missouri); and Health Midwest-Johnson County (in reference to Johnson County, Kansas).

Research Hospital is under the management of Health Midwest-Central Region.

C. HEALTH MIDWEST CENTRAL REGION.

Grouped under the management of the Health Midwest Central Region are three acute care hospitals: Research Hospital located at 2316 East Meyer Boulevard, Kansas City Missouri, Research-Belton Hospital located at 17065 S. 71 Highway, Belton, Missouri and Baptist Hospital located at 6601 Rockhill, Kansas City, Missouri. As stated in the section above, Research Hospital and Research-Belton Hospital are operated by the same corporation, Hospital Corporation of America Research Medical Center. Baptist Hospital is separately incorporated.

Also grouped under the management of the Central Region are: 1) the Nursing College located at 2300 East Meyer Boulevard in a building adjacent to and connected to Research Hospital’s facility at 2316 East Meyer Boulevard; 2) the Psych Center located at 2323 East 63rd Street, Kansas City, Missouri on the “campus” of Research Hospital; 3) The Diabetes Center of Health Midwest with a main office at 2188 E. Meyer Boulevard, Kansas City, Missouri and four other locations in or near other Health Midwest acute care hospitals, two of which are located within the Kansas City metropolitan area and two of which are outside the Kansas City metropolitan area; 4) Trinity Family Medicine Center located at 2900 Baltimore, Kansas City, Missouri, approximately 7 miles from Research Hospital; 5) The Transplant Institute with an outpatient clinic located at 6400 Prospect on the Research Hospital campus; 6) the Communicative Disorders Clinic with

an outpatient clinic located at 2300 East Meyer Boulevard on the Research Hospital campus; 7) Child Development Center, located on the campus of Research Hospital with the same address as Research Hospital; 8) Business and Industry Health Group located at 6400 Prospect, Kansas City, Missouri on the Research Hospital campus; and 9) Trinity Lutheran Manor Nursing Home located at 9700 W 62nd Street, Merriam, Kansas.

The Nursing College, the Diabetes Center of Health Midwest, Trinity Family Medicine Center, The Transplant Institute, the Communicative Disorders Center, and Child Development Center operate under the same corporation, Hospital Corporation of America Research Medical Center, as Research Hospital. The Psych Center is separately incorporated. The record does not reflect whether Business and Industry Health Group or Trinity Lutheran Manor Nursing Home are separately incorporated or the name of the corporation under which they operate.

D. RESEARCH HOSPITAL CAMPUS

Research Hospital Campus is a several block area in Kansas City, Missouri bounded by 63rd Street on the North, Prospect Avenue on the East, and Meyer Boulevard on the South. The record does not reflect the street name of the western boundary of the campus.

Research Hospital is located in a large building with a street address of 2316 East Meyer Boulevard, Kansas City, Missouri, on the southeast section of the Research Hospital Campus. The Research Hospital building at 2316 East Meyer Boulevard houses the 536-bed facility acute care hospital with 7 above-ground floors and 2 below-ground floors.

To the north of Research Hospital's 2316 East Meyer Boulevard building are two separate Medical Office Buildings, one located at 6400 Prospect and the other at 6420 Prospect. Located in the building at 6400 Prospect are: 1) the Transplant Institute's outpatient clinic, 2) an office of a Health Midwest enterprise called the Business and Industry Health Group; and 3) medical offices of physicians in private practice. The building at 6420 Prospect houses private medical offices and at one time housed the

Health Midwest Sports Medicine Clinic (The Sports Medicine Clinic was in operation in 2000 but does not appear to be currently in operation.) Both Medical Office buildings are connected to the 2316 East Meyer Boulevard building by interior hallways.

To the west of the Research Hospital building at 2316 East Meyer Boulevard is a building with a street address of 2300 East Meyer Boulevard that houses the outpatient clinic of the Communicative Disorders Center and the Research Hospital College of Nursing. The building at 2300 East Meyer Boulevard is connected to Research Hospital's building at 2316 East Meyer Boulevard by an underground tunnel or walkway.

North of the 2300 East Meyer Boulevard building housing the Communicative Disorders Center and the Research Hospital College of Nursing, and west of the 2316 East Meyer Boulevard building, is a building housing the Health Midwest corporate offices. The address of this building is not reflected in the record.

West of the 2300 East Meyer Boulevard building housing the Communicative Disorders Center and Research Hospital College of Nursing, and southwest of the building housing Health Midwest's corporate offices, is a building housing the main office of the Diabetes Center of Health Midwest. (Other offices of the Diabetes Center of Health Midwest are located on the campus of Health Midwest Overland Park Regional Hospital in Overland Park, Kansas, on the campus of Health Midwest MCI Hospital in Independence, Missouri, and at Health Midwest hospitals in Lexington and Chillicothe, Missouri).

Immediately west of the building housing the main office of the Diabetes Center of Health Midwest is the Student Village building that provides housing to some of the nursing students at Research Hospital College of Nursing.

North of the building housing the main office of the Diabetes Center of Health Midwest and the Student Village is a freestanding building housing the Child Development Center. The Child Development Center is located on an access road called the ring road that cuts across the campus diagonally from the southwest to the northeast. The Child

Development Center does not have an address separate from the acute care hospital at 2316 East Meyer Boulevard.

Located at the northwest corner of the Research Hospital “campus”, and to the north of the Child Development Center, the north of the Health Midwest corporate offices, and northwest of Research Hospital’s building at 2316 East Meyer Boulevard, is the Research Psychiatric Hospital known as the Psych Center.

E. RESEARCH HOSPITAL

The Parties agree that Research Hospital is an acute care hospital and that the main building of Research Hospital is located at 2316 East Meyer Boulevard, Kansas City, Missouri. The building located at 2316 East Meyer Boulevard consists of seven above-ground and two below-ground floors. The major departments located within the 2316 East Meyer Boulevard building include, among others, Radiology, Nuclear Medicine, Laboratory, Emergency, Operating Rooms, Cardiology, ICU, GI Lab, Physical Therapy/Occupational Therapy, Outpatient West, Inpatient Rehabilitation, Maternal Fetal Medicine Clinic, NICU, Labor & Delivery, Pediatrics, Skilled Nursing, Pain Institute, Surgical Unit, Pulmonary Unit, General Medicine Unit, Metabolic/Nephrology Unit, Renal Dialysis, Orthopedics/Neurology, and Cardiac Rehabilitation, Central Distribution, Purchasing, Print Shop, Plant Operations, Laundry, and Human Resources.

The Petitioners both contend that the acute care hospital known as Research Hospital is limited to the building at 2316 E. Meyer Boulevard, Kansas City, Missouri.

The Employer asserts that the following services and functions are included in the entity known as Research Hospital: 1) Transplant Institute including its functions within Research Hospital and at its outpatient clinic located at 6400 Prospect; 2) Communicative Disorders Center including its functions within Research Hospital and at its outpatient clinic located at 2300 East Meyer Boulevard; 3) Nursing College located at 2300 East Meyer Boulevard; 4) the Child Development Center (no separate address from the 2316 East Meyer Boulevard building but located in a separate building); 5) the main office of

the Diabetes Center of Health Midwest located at 2188 East Meyer Boulevard, Kansas City, Missouri, and the offices of the Diabetes Center of Health Midwest located at 2400 R.D. Mize Road, Independence, Missouri (on the “campus” of Health Midwest MCI Hospital), and at 12200 W. 106th Street, Overland Park, Kansas (on the “campus” of Health Midwest Overland Park Regional Hospital); 6) the acute care hospital known as Research-Belton Hospital located at 7065 S. 71 Highway, Belton, Missouri, approximately 15 miles south of the 2316 East Meyer Boulevard building; and 7) Trinity Family Medicine Center located at 2900 Baltimore, Kansas City, Missouri, approximately 7 miles from the 2316 East Meyer Boulevard building.

VI. HEALTH MIDWEST BARGAINING HISTORY

A. RESEARCH HOSPITAL

At Research Hospital there is a prior bargaining history with regard to skilled maintenance employees, but not for any other group of employees. For over 25 years, the Operating Engineers have represented a bargaining unit of skilled maintenance employees employed at Research Hospital’s building at 2316 East Meyer Boulevard, Kansas City, Missouri. Since its creation in the early 1980’s, Research-Belton Hospital has employed a separate complement of skilled maintenance employees, and the skilled maintenance employees employed at Research-Belton Hospital have never been included in the established Research Hospital skilled maintenance employee bargaining unit. Shortly after Research-Belton Hospital was created, the Operating Engineers requested that the skilled maintenance employees employed at Research-Belton Hospital be included in the existing bargaining unit. Negotiations were held regarding the Operating Engineers’ request to expand the existing skilled maintenance employee bargaining unit to include employees employed at Research-Belton Hospital. These negotiations ceased after the Employer conditioned acceptance of an expanded bargaining unit upon the union’s agreement to mandatory temporary transfers between Research Hospital and Research-Belton Hospital. Negotiations on this issue were not resumed and there is no evidence that the issue has been revisited in the approximately 20 years since Research-

Belton Hospital was established. Skilled maintenance employees employed at Research-Belton Hospital remain unrepresented.

B. BARGAINING HISTORY IN HEALTH MIDWEST SYSTEM

1. HEALTH MIDWEST-CENTRAL REGION

There are three acute care hospitals managed within the Health Midwest-Central Region: 1) Research Hospital; 2) Research Belton Hospital; and 3) Baptist Hospital. The Psych Center hospital is also managed within the Health Midwest-Central Region.

As set forth above, there is a prior bargaining history at Research Hospital for skilled maintenance employees. In 2000 and 2002, the Petitioner-Nurses filed petitions for an election in a bargaining unit of registered nurses employed by Visiting Nurses of Health Midwest (VNA). Employees of the VNA provide services from offices located in Kansas City, Missouri and in Lexington, Missouri. An election was held in this bargaining unit in 2002, but no determination regarding the results of the election has been made. Until December 2000, the VNA was considered a “department” of Research Hospital for purposes of Medicare reimbursement. However, since 2001, the VNA has been considered a separate entity from Research Hospital for purposes of Medicare reimbursement. There is no evidence that the change in designation of the VNA from a “department” to a separate entity was accompanied by any change in the physical location of the VNA, or any organizational change in management.

There is no prior bargaining history for employees at Research Belton Hospital or Baptist Hospital.

With regard to the Psych Center, an election was held on March 28, 1991, pursuant to a stipulated election agreement in a bargaining unit that included registered nurses, licensed practical nurses, mental health workers, dietary staff, office staff, housekeeping staff, recreational therapists, and occupational therapists. The Service Employees International

Union, AFL-CIO, the petitioner, did not obtain a majority of the votes cast in the March 28, 1991, election.

2. HEALTH MIDWEST-INDEPENDENCE REGION

Three acute care hospitals are managed within the Health Midwest-Independence Region:

1) Medical Center of Independence (MCI) located at 17203 East 23rd Street, Kansas City, Missouri; 2) Independence Regional Health Center (Independence Hospital) located at 1509 Truman Road, Independence, Missouri; and 3) Lees' Summit Hospital (Lees' Summit Hospital) located at 530 Northwest Murray Road, Lees' Summit, Missouri.

The Petitioner-Nurses was certified as the bargaining representative of the registered nurses employed at Lees' Summit Hospital on April 24, 2000. On July 31, 2001, the Petitioner-Nurses was certified as the bargaining representative of the registered nurses employed at MCI Hospital. In the Decision and Direction of Election directing the election held at MCI, the Employer's assertion that the appropriate bargaining unit was a multi-facility bargaining unit of registered nurses employed at MCI Hospital and at Independence Hospital was rejected. MCI Hospital and Independence Hospital are located approximately 4 miles apart.

Negotiations between the Employer and the Petitioner-Nurses are ongoing but have not resulted in agreement on a contract to date.

3. HEALTH MIDWEST-JOHNSON COUNTY

Two acute care hospitals are managed within the Health Midwest-Johnson County Region: 1) Menorah Medical Center (Menorah Hospital) located at 5721 West 119th Street, Overland Park, Kansas, and 2) Overland Park Regional Medical Center (Overland Park Regional Hospital) located at 10500 Quivira Road, Overland Park, Kansas.

The Petitioner-Nurses was certified as the bargaining representative of the registered nurses employed at Menorah Hospital on December 18, 2000. In the Decision and

Direction of Election directing the election at Menorah Hospital, the Employer's contention that the appropriate bargaining unit was a multi-facility bargaining unit of registered nurses employed at Menorah Hospital and at Overland Park Regional Hospital was rejected. Menorah Hospital and Overland Park Regional Hospital are located approximately 6-7 miles apart.

Negotiations between the Employer and the Petitioner-Nurses are ongoing but have not resulted in agreement on a contract to date.

4. ABSENCE OF MULTI-FACILITY BARGAINING

In summary, there is a bargaining history within the Health Midwest health care system -- bargaining units are limited in scope to a specific acute care hospital or a specific health care service. The bargaining history of Research Hospital, as established by the longstanding bargaining unit of skilled maintenance employees, is that Research Hospital is separate from other Health Midwest entities including the employees of Research-Belton Hospital. There is no history of multi-facility bargaining within the Health Midwest system.

VII. BOARD'S ACUTE CARE HOSPITAL RULE

A. SINGLE ACUTE CARE HOSPITAL UNIT PRESUMPTIVELY APPROPRIATE

1. ACUTE CARE HOSPITAL RULE GENERALLY

The National Labor Relations Board's Final Rule on Collective Bargaining Units in the Health Care Industry, is set forth at 29 CFR section 103.30; 54 Fed. Reg. No. 76, 284 NLRB 1580, 1596 (1989) (the Rule). The Rule established the following basic principles regarding *acute care hospital bargaining units*: 1) a single acute care hospital is a presumptively appropriate bargaining unit; 2) an acute care hospital bargaining unit *includes the non-acute care services offered by the acute care hospital*; 3) except in "extraordinary circumstances" an acute care hospital will not be combined in a single bargaining unit with *separate* non-acute care entities; 4) the party seeking to demonstrate

the presence of “extraordinary circumstances” has a “heavy burden” of showing that its arguments are substantially different from those considered by the Board during the rulemaking process; 5) within an acute care hospital there are eight appropriate bargaining units and the appropriateness of these eight bargaining units is not subject to adjudication; and 6) when “extraordinary circumstances” are shown to exist so that an acute care hospital is combined with separate non-acute care services, both the presumption that a single acute care hospital bargaining unit is appropriate is rebutted, and the Rule’s determination of eight appropriate bargaining units is inapplicable and the Board shall determine the appropriate bargaining units by adjudication. See 29 CFR Part 103.30 (a) and (b).

With regard to the “extraordinary circumstances” exception to the Rule, the Board indicated that it is to be construed narrowly. Considerations such as the size of the institution, the variety of services (including the range of outpatient services), different staffing patterns, and the degree of work contacts between groups of employees, do not fall within the exception. The party seeking to demonstrate extraordinary circumstances has the “heavy burden” of showing that its arguments are substantially different from those considered by the Board during the rulemaking process. 284 NLRB 1573-1574.

In considering the Rule, the Board acknowledged factors that established the separate community of interest of registered nurses within an acute care hospital including, inter alia: 1) registered nurses in acute care facilities had a professional responsibility which required them as a group to be scheduled to be on duty 24 hours a day, 7 days a week and this unique responsibility within the acute care hospital generated unique scheduling demands upon registered nurses; 2) nursing demanded continuous contact and interaction with patients and the necessity to be alert for errors made by other professionals; and 3) nursing activities within an acute care hospital were generally organized through a department of nursing and were supervised by registered nurses. See 284 NLRB at 1544.

The Rule was approved by the Supreme Court in American Hospital Assn. v. NLRB, 11 St. Ct. 1539, 499 US 606 (1991).

2. ACUTE CARE HOSPITAL UNITS

The Rule establishes that in an acute care hospital there are eight appropriate bargaining units and the appropriateness of these bargaining units is not subject to adjudication: 1) all registered nurses; 2) all physicians; 3) all professionals except for registered nurses and physicians; 4) all technical employees; 5) all skilled maintenance employees; 6) all business office clerical employees; 7) all guards; and 8) all nonprofessional employees except for technical employees, skilled maintenance employees, business office clerical employees, and guards.

The Rule does not apply to non-acute care health facilities that are separate from an acute care hospital. In such non-acute care facilities, the determination of appropriate bargaining units is subject to adjudication and is governed by the standards set forth in Park Manor Care Center, 305 NLRB 872 (1991). Park Manor Care Center at 875 provides for the utilization of “community of interests” factors and also background information gathered during rulemaking and prior precedent and describes the standard as a “pragmatic or empirical community of interest” approach. Specifically, in non-acute care facilities the appropriateness of a bargaining unit limited to registered nurses or to non-professional employees is subject to adjudication.

Moreover, the eight appropriate bargaining units established by the Rule are not applicable to acute care hospitals when “extraordinary circumstances” establish that the acute care hospital must be combined with a separate non-acute care facility for the purposes of collective bargaining. In such cases bargaining units are established by adjudication based on “community of interests” between classifications of employees.

3. BROAD DEFINITION OF “ACUTE CARE HOSPITAL”

The Rule provides that the term “acute care hospital” includes acute care hospitals that also offer non-acute care services such as, for example, long term care, outpatient care, psychiatric care, or rehabilitative care. Non-acute care services or departments of an acute care hospital are included within the acute care hospital bargaining unit and are not carved out of the acute care hospital bargaining unit.

In the event that a single hospital offers both acute care with non-acute care, the Rule applies unless any one of the excluded ancillary services “predominates”. The Board stated that it did not intend “to permit a hospital to argue successfully that since the number of its outpatient visitors exceeded the number of its over-night (acute care) patients, it was not an acute care hospital, and therefore not subject to the rules.” 284 NLRB 1591 (emphasis supplied). In order to prevent unintended litigation over such a claim, the Board deleted the initial reference to “the primary purpose of the hospital” from the final Rule. Thus, the Rule applies when a single hospital has an acute care function even though the acute care function is not the “primary” or “majority” purpose of the hospital, but the Rule does not apply when the non-acute care functions “predominate”. See for example The Child’s Hospital, 310 NLRB 560 (1993), a decision generated by the remand of The Child’s Hospital, 307 NLRB 90 (1992). In the second The Child’s Hospital case, there were two issues: 1) whether there was *one entity* that offered both acute care services and non-acute care services or whether a separate acute care hospital combined with separate non-acute care entities so that the Rule was inapplicable; and 2) if there was a single entity that offered both acute care services and non-acute care services the entity met the definition of an “acute care hospital” under the Rule when the non-acute care services constituted a majority of the services offered by the entity. In the second The Child’s Hospital case, it was determined that, although the acute care and non-acute care services were separately incorporated, together they were a single entity (called “single-facility” by the Board). It was further determined that the single entity was an acute care hospital even though the acute care services were not a majority of the services offered by the entity. Since the entity was an acute care hospital, the Rule was applicable and a bargaining unit limited to registered nurses was irrebutably presumed to be appropriate and the employer was not permitted to litigate the appropriateness a broader unit.

4. THE RULE EFFECTUATES CONGRESSIONAL INTENT TO EXTEND BARGAINING RIGHTS AND BOARD CONCERN THAT OVERLY BROAD UNITS PRECLUDE BARGAINING RIGHTS

In the Rule, the Board determined that a bargaining unit limited to a single acute care hospital maximizes Congressional intent to extend bargaining rights to health care employees in acute care hospitals and that a bargaining unit limited to a single acute care hospital was not contrary to Congressional concerns regarding proliferation of bargaining units in the health care industry.

In the rulemaking process establishing the Rule, the Board noted that Congress passed the health care amendments to extend to health care employees the right afforded by Section 7 of the National Labor Relations Act to choose union representation and to bargain collectively. The Board expressly noted that overly broad bargaining units in the health care industry militated against organizing and against collective bargaining after a union representative gained certification and thus overly broad bargaining units were contrary to the intent of Congress in passing the health care amendments. See 284 NLRB at 1542-1543. The Board stated that overly-broad bargaining units frustrated collective bargaining because “too diversified a constituency...may generate conflicts of interest and dissatisfaction among fringe groups, making it difficult for the union to represent”. See 284 NLRB at 1551.

By issuance of the Rule, the Board determined that a bargaining unit limited to employees in a single acute care hospital was a presumptively appropriate bargaining unit and that such a bargaining unit was responsive to and maximized Congressional intent to extend bargaining rights to health care employees in an acute care hospital.

5. RULE CONSIDERS UNIT PROLIFERATION IN ACUTE CARE HOSPITALS

In determining that a bargaining unit limited to employees in a single acute care hospital was a presumptively appropriate bargaining unit, the Board determined that such a

bargaining unit was not inconsistent with or contrary to Congressional concern with unit proliferation.

During the rulemaking process, the Board stated “we believe that Congressional and industry concern with proliferation was directed towards the fifteen to twenty plus units that had arisen in the health care and other industries prior to the amendments and the possibility of scores of units if each hospital classification were permitted to organize separately”. 284 NLRB at 1575. In making the determination that a bargaining unit limited to employees in an acute care hospital constituted a separate appropriate bargaining unit, the Board rejected the argument that a bargaining unit limited to employees in a single acute care hospital was contrary to the intent of Congress to avoid “undue proliferation” of bargaining units, and the Board identified the Congressional concern regarding “proliferation” to concern multiple units within an acute care hospital, not to concern a principle of organization that required the grouping of an acute care hospital with non-acute care services offered by an entity separate from the acute care hospital.

6. RULE ESTABLISHES PRESUMPTION THAT SINGLE ACUTE CARE HOSPITAL UNIT APPROPRIATE

In addition to establishing eight appropriate units in a single acute care hospital, the Rule inherently establishes that the scope of the bargaining unit is a single acute care hospital. In its rulemaking process, the Board was not concerned with whether the acute care hospital was in a single building, housed in multiple buildings, housed in buildings connected to other buildings by walkways, bridges, or tunnels, or whether the acute care hospital building(s) was located on a medical campus in close proximity to other health related services as relevant considerations for the scope of the bargaining unit in an acute care hospital. Rather, the Board discussed discrete entities such as “acute care hospital”. There is nothing in the Rule that supports an interpretation that the unit determinations made in the Rule are applicable only to hospitals that happen to be located in a single building. Simple observation establishes that many, if not most, acute care hospitals are located in more than one building, in a building(s) connected to other buildings by

walkways, or located on a medical “campus” in close proximity to other health care services. Yet the Rule does not give weight to or even mention any of these facts as a relevant consideration.

In the Rule, the Board determined: 1) employees in an acute care hospital have separate interests from employees employed by separate non-acute care entities such as, but not limited to, long term care, outpatient care, psychiatric care, or rehabilitative care; 2) there are eight appropriate units in an acute care hospital and these appropriate units are not subject to adjudication; 3) the Rule applies to all facilities with a substantial acute care aspect as long as the facility is not “predominately” an excluded facility such as a nursing home, a psychiatric hospital, or a rehabilitation hospital; and 4) non-acute care services offered by entities separate from the acute care hospital are not to be combined with the acute care hospital in a single bargaining unit absent “extraordinary circumstances”.

In establishing the Rule, the Board rejected arguments that an acute care hospital should be grouped with separate non-acute care entities or services and rejected the claim that it was “undue proliferation” of bargaining units to recognize an acute care hospital as a separate appropriate bargaining unit. The Rule established that an acute care hospital is unique from other non-acute care health entities and further established a presumption that an acute care hospital constitutes a separate appropriate bargaining unit.

B. POST-RULE BOARD LAW

1. OVERVIEW

The instant case involves a factual situation that is not atypical or unusual. Simply stated, the issue here is whether employees of a single acute care hospital, Research Hospital, constitute an appropriate bargaining unit when Research Hospital is ultimately owned and operated by a corporation, Health Midwest, which operates a large and diverse health care system of multiple acute care hospitals and other non-acute care entities. Resolution of the issue requires an initial determination of the parameters of Research Hospital itself and a secondary determination whether Research Hospital should be combined with any other entity into a single bargaining unit.

From my further research and review of post-Rule Board law occasioned by the November 4, 2002, remand and from the direction offered by the remand itself, it appears that there is a lack of Board law to establish a test for determining the parameters of an acute care hospital. In my view, in order to establish such parameters, the following must be avoided in developing that test: 1) formulas such as a single building being afforded the “single-facility” presumption to define a single acute care hospital, which formulas are directly contrary to the letter and the spirit of the Rule, and are unworkable in practice; 2) a failure to recognize the Rule as the primary and overriding authority in the determination of bargaining units in acute care hospitals; 3) a negation of the application of the Rule to acute care hospitals based on the happenstance of the real estate in which the acute care hospital is housed or located; 4) a failure to recognize the sharp distinction drawn in the Rule between non-acute care services offered *by an acute care hospital* and non-acute care services offered *by entities separate from the acute care hospital, and failure to recognize the very different results of the inclusion of the former services (mandated by the Rule to be included within the eight bargaining units established by the Rule) and the inclusion of the latter services (which makes the eight bargaining units established by the Rule inoperative and makes the unit scope determinations in an acute care hospital subject to adjudication)*; 5) a failure to recognize the distinction between the inclusion of non-acute care services offered by an acute care hospital and non-acute care services that are distinct or separate from the acute care hospital which results in confusion of the *separate issues* of determining the *scope or definition of the acute care hospital itself* and determining whether a “*multi-facility bargaining unit*” consists of the combination of the acute care hospital with separate acute-care hospitals and/or with separate non-acute care entities; 6) a failure to recognize that the Rule establishes the standard of “extraordinary circumstances” for combining employees of an acute care hospital with employees of separate non-acute care entities, and an improper use of the “multi-facility” test to determine whether to combine an acute care hospital with non-acute care entities; and 7) a failure to recognize the critical importance of finding that where the “extraordinary circumstances” standard has been met, the unit scope

determinations made by the Rule are inapplicable, thereby opening the scope of the appropriate bargaining unit to adjudication.

In summary, as discussed in more detail below, a review of the Rule and post-Rule Board law establishes: 1) the Rule provides a presumption that a single acute care hospital is an appropriate bargaining unit; 2) there is a “single acute care hospital” presumption and a “single-facility” should be defined to mean “single acute care hospital”; 3) formulas based on whether an acute care hospital is based in a single building, in a building(s) connected to other buildings in some other manner, or on a medical campus, are not workable in determining or defining the scope or definition of the acute care hospital itself and are contrary to the letter and to the spirit of the Rule; 4) the “multi-facility” test has limited (if any) application to the scope or definition of a single acute care hospital, and other suggested measures including Medicare reimbursement, accreditation, scope of the corporate parent’s operations, or community of interest are not determinative of the scope or definition of a single acute care hospital; 5) the standard for the combination of separate acute care hospitals into a single bargaining unit is the “multi-facility” test; 6) the combination of multiple acute care hospitals into a single bargaining unit does not negate the application of the Rule’s establishment of eight irrebuttably appropriate bargaining units; 7) the Rule establishes an “extraordinary circumstances” standard for the combination of an acute care hospital or acute care hospitals with separate non-acute care health care entities in a single bargaining unit, and the “multi-facility” test is not applicable to such a determination; and 8) when the “extraordinary circumstances” standard is met, and the employees in an acute care hospital are combined with employees in a separate non-acute care health entity, the Rule is not applicable to establish eight irrebuttably appropriate bargaining units and the issues of whether the bargaining unit is limited to registered nurses, to non-professional employees, or to the other six bargaining units established by the Rule is opened to adjudication.

A more detailed review of the post-Rule law upon which the above conclusions are based is contained in the following sections. Also considered in the following sections are the

various contentions made by the parties regarding the appropriate method to define the parameters of the acute care hospital known as Research Hospital.

2. SINGLE-FACILITY PRESUMPTION IN ACUTE CARE HOSPITAL

a) UNIVERSITY OF PITTSBURGH MEDICAL CENTER CASE

The Board's November 4, 2003 remand at page 2 cites The University of Pittsburgh Medical Center, 313 NLRB 1341, 1342 (1994) and suggests that: 1) the single facility presumption does not apply to an acute care hospital housed in more than one building; and 2) if the single-facility presumption is not applicable, then "a determination must be made as to which groups among multiple locations constitute appropriate multi-facility units. That analysis requires the application of traditional community of interest factors, and the Regional Director must explain why the employees in the groupings found appropriate have a distinct community of interest from the employees excluded".

It is submitted that any reading of The University of Pittsburgh Medical Center that equates a "single-facility" with a single building, or holds that the single facility presumption is not applicable to an acute care hospital housed in more than one building is clearly erroneous because: 1) *on the facts*, the Board in The University of Pittsburgh Medical Center recognized that two acute care hospitals, each consisting of multiple buildings, were two separate entities and constituted separate appropriate bargaining units and 2) the failure to apply the "single acute care hospital" presumption to an acute care hospital housed in more than one building is in direct conflict with both the Rule, and with post-Rule Board law.

The University of Pittsburgh Medical Center case involved an established skilled maintenance bargaining unit at the acute care hospital Presbyterian University Hospital "facility". The Presbyterian University Hospital "facility" included eight buildings, several separated by one or more blocks from the others and one building located five miles from the more central grouping of buildings. The issue in the University of Pittsburgh Medical Center was whether the existing skilled maintenance bargaining unit

which was co-extensive with the Presbyterian University Hospital facility was no longer appropriate because of the merger of Presbyterian University Hospital with a second acute care hospital, Montefiore Hospital, which consisted of an additional five buildings located in close proximity to Presbyterian University Hospital. Just how close and intermingled the buildings of the two hospitals were is described by the Board at page 1342 of the decision: “Although Presbyterian’s and Montefiore’s facilities are near each other; some Montefiore buildings are closer to Presbyterian than some of Presbyterian’s buildings are to each other; *and some buildings are connected by walkways, bridges, or tunnels*; this proximity has not substantially impacted on the operation of the existing unit” (emphasis supplied). Although the Board declined to apply the “single facility” presumption to the established bargaining unit at Presbyterian University Hospital, and stated that the existing bargaining unit was more accurately described as a multi-facility bargaining unit, the Board recognized that Presbyterian University Hospital remained a separate entity and a separate appropriate bargaining unit. At page 1342 of its decision, the Board stated “this case does not raise the issue of whether the scope of the existing unit within a facility conforms to the units deemed appropriate in the rule-making: rather, it is clear that, within Presbyterian, the existing unit encompasses all skilled maintenance employees except those sought to be added by this petition”. Thus, the Board in The University of Pittsburgh Medical Center recognized that a single “acute care facility” (Presbyterian University Hospital) may be comprised of multiple buildings. The Board further recognized that a single acute care facility (hospital) comprised of multiple buildings is properly considered as a single entity separate from a second acute care hospital complex consisting of five buildings even if the two acute care hospitals are located on the same campus and some of the buildings of the two separate hospitals were connected by walkways, bridges, and tunnels.

It is unclear whether the Board, by the use of the term “multi-facility” in its analysis, referred to the inclusion in the Presbyterian University Hospital unit of the building located five miles away from the central grouping of hospital buildings, or if the Board meant which buildings at the central grouping of buildings comprised Presbyterian University Hospital. In any event, The University of Pittsburgh Medical Center cannot

be read to hold that the Board's health care Rule does not apply to an acute care hospital comprised of more than one building or to overrule the Rule's presumption that a bargaining unit comprised of a single acute care hospital is appropriate regardless of whether the acute care hospital consists of multiple buildings. Moreover, the Board in The University of Pittsburgh Medical Center rejected the argument that two acute care hospitals on a single medical campus must be combined into a single bargaining unit and further rejected the approach of considering whether buildings are connected by walkways, bridges, or tunnels as determinative of the scope or identity of a specific acute care hospital.

If The University of Pittsburgh Medical Center were read to require a multi-facility analysis within a single acute care hospital, there is a distinct possibility that a single acute care hospital could potentially be split into separate bargaining units based on the separate community of interest of employees in its various buildings, a result contrary to both the Rule and to the intent of Congress to prevent proliferation of bargaining units within a single acute care hospital. Similarly, perceiving a "single building" to be the same as a "single facility" opens the possibility that a single health care service consisting of multiple buildings will be split into multiple parts. Such an approach would potentially result in the proliferation of bargaining units within a single acute care hospital. Further, as discussed in more detail below, the Board has applied the single-facility presumption to entities, including acute care hospitals, that are housed in more than one building.

b) CHILD'S HOSPITAL CASES

In Child's Hospital, 307 NLRB 90 (1992), the Board found that three operations which were separately incorporated (a hospital, nursing home, and a service center) constituted a single facility where the operations were located in a single building, there was considerable integration of operations (including admissions and lab work), and a high degree of contact between employees. At 307 NLRB at 91-92, the Board stated "it is undisputed that the nursing home, hospital, and Samaritan Service constitute a single employer. We find that the evidence also establishes that the nursing home, hospital and

Samaritan are sufficiently integrated, both physically and operationally, as to require that they be treated as a single facility”. In that case, the Board, at 90, asserted that the determination of the appropriate bargaining unit consisting of the single facility including the hospital, nursing home, and service center was governed by the principles set forth in the Board’s decision in Park Manor Care Center, 305 NLRB 872 (1991) -- that the unit determination was not covered by the Rule -- and the Board remanded the case to the Region for determination of the bargaining unit. Thus, the Board’s remand assumed that services offered by the single entity that included Child’s Hospital were “predominately” non-acute care and the single entity did not meet the Rule’s definition of an “acute care hospital,” the Rule was, therefore, not applicable, and the issue of whether a bargaining unit limited to registered nurses was appropriate was subject to adjudication.

On remand, the employer argued that the single entity that included Child’s Hospital was a non-acute care facility, that the Rule was, therefore, not applicable, and a bargaining unit limited to registered nurses was open to adjudication, and that a bargaining unit limited to registered nurses was not appropriate. The Region then determined that there was a single entity that included Child’s Hospital, the nursing home, and the service center, that the single entity met the definition of “acute care” facility, and that the Rule applied notwithstanding the fact that the majority of the services offered by the single entity were not acute care services. The Region noted that the Board did not intend to permit an acute care hospital to litigate whether a majority of its services were non-acute care, and that the Rule applied to acute care hospitals even if acute care did not constitute *a majority* of its services. (The Rule would apparently exclude from the definition of acute care hospital entities that offered “predominately” nursing home services). See Child’s Hospital, 310 NLRB 560 (1993). Thus, the Region determined that there was one employer entity involved, the one entity was an acute care hospital, and that the employer was not permitted to litigate the issue of whether a bargaining unit limited to registered nurses was appropriate. If the Region had determined that the bargaining unit consisted of an acute care hospital and separate non-acute care entities, the employer would have been permitted to litigate whether a unit limited to registered nurses was appropriate. The Board issued a short form denial of the employer’s request for review

of the Region's decision noting that it found that a unit of registered nurses was appropriate. See 310 NLRB 560 (1993).

The Employer here cites the second Child's Hospital case as authority for the proposition that a "single facility" may be *broader than a single acute care hospital* and attempts to use the second Child's Hospital case as authority for a bargaining unit that combines Research Hospital and the Psych Center in a so-called "campus" bargaining unit. However, the Employer's reading of the second Child's Hospital case is erroneous. The finding in the second Child's Hospital's case was that there was *only one entity present, and that entity was an acute care hospital*.

c) OTHER CASES

1) SINGLE FACILITY PRESUMPTION APPLIED TO MULTIPLE BUILDINGS

In Children's Hospital of San Francisco, 312 NLRB 920 (1993), the Board expressly applied a single facility presumption to one acute care hospital after the merger of two acute care hospitals located approximately one mile apart. Each acute care hospital was located on a separate "campus" and each "campus" and each acute care hospital was comprised of multiple buildings. The two hospitals were comprised of a total of 60 buildings. See 312 NLRB at 921, 923, fn. 8.

Notwithstanding the "multi-facility" language used by the Board in The University of Pittsburgh Medical Center, 313 NLRB 1341, 1342 (1994), the Board in that case recognized that two acute care hospitals were separate entities and remained separate appropriate bargaining units even though each hospital consisted of multiple buildings, the two hospitals shared a single main campus, and in some cases the buildings of the two hospitals were connected by "walkways, bridges, and tunnels". Thus, despite the Board's statement that the "single-facility" presumption did not apply, in fact, the Board recognized that the circumstance that a hospital occupied more than one building, that some of its buildings were connected to the buildings of another separate hospital, and

that it was located on the same campus as another acute care hospital, did not necessarily destroy or negate its identity as a separate and distinct acute care hospital.

In First Security Services Corp., 329 NLRB 235 (1999), the Board applied a single facility presumption to Bridgeport Hospital which included the hospital's main campus and a satellite location five miles away, thus recognizing that an acute care hospital could be housed in multiple buildings. See also Brattleboro Retreat, 310 NLRB 615, 620 (1993) where the Regional Director in the Decision and Direction of Election found that although there were multiple buildings, there was only one facility: "In reality, Linden Lodge is more akin to a separate building of one facility than to a distinct facility".

2) A CAMPUS IS NOT PRESUMED TO BE A "SINGLE FACILITY"

The Board has expressly and repeatedly rejected the approach of automatically finding that a medical "campus" itself is a "single facility" or that all of the entities on the campus are appropriately joined in a single bargaining unit merely because they are located on the same campus. Thus, in Passavant Retirement and Health Center, Inc., 313 NLRB 1216 (1994), at 1218, the Board held: "Although Newhaven Court is located on the same campus as the Main Building and other Employer facilities, we find that Newhaven Court, rather than all of the buildings on the campus, constitutes a "single facility" for the purposes of applying the presumption" citing Mercywood Health Building, 287 NLRB 1114 (1988), enf. denied sub nom. NLRB v. McAuley Health Center, 855 F. 2d 341 (6th Cir. 1989). The facts in Passavant involved a 42-acre campus that included a 159-bed skilled nursing hospital with 78 adjoining assisted living units (Main Building), a 77-unit independent living facility (Wittenburg Place), a low-income facility (Luther Court), 130 independent living cottages, and a new assisted living facility (Newhaven Court). The issue in Passavant was whether the newly established Newhaven Court constituted an accretion to the established bargaining unit at the Main Building located 300 yards away. In finding that the Newhaven Court was a separate and distinct entity from the Main Building, even though both entities offered assisted living services, the Board noted that Newhaven Court "is a separate and distinct assisted living facility located 300 yards away from the Main Building with its own residents and staff. Because

Newhaven is a separate facility, we find that a unit of resident coordinators at Newhaven Court is presumptively appropriate”. The Board found that, in the absence of evidence of substantial contact and interchange among the employees of the two assisted living facilities, the facilities remained separate entities. In Passavant, the Board stated at 1218 that “(i)t is well settled that the doctrine of accretion will not be applied where the employee group sought to be added to an established bargaining unit is so composed that it may separately constitute an appropriate bargaining unit” and noted that “the absence of employee interchange and the lack of common immediate supervision are especially important factors militating against a finding of accretion” citing Towne Ford Sales, 270 NLRB 311 (1984), *affd. sub nom. Machinists Local 1414 v. NLRB*, 759 F.2d 1477 (9th Cir. 1985).

The Board has held in many other cases that mere location on the same medical or hospital campus is not determinative of the scope of the appropriate bargaining unit and that a medical campus does not, in itself, constitute a single facility and that a campus-wide unit is not presumptively appropriate. In The University of Pittsburgh Medical Center, 313 NLRB 1341, 1342 (1994), discussed above, two acute care hospitals were recognized as separate entities and separate appropriate bargaining units even though the two hospitals consisted of multiple buildings, intermingled on a single blended “campus,” and where some of the buildings of each hospital were connected by “walkways, bridges, and tunnels” to buildings housing the other hospital.

Similarly, in Visiting Nurses Association of Central Illinois, 324 NLRB 55 (1997), the Board found a unit of visiting nurses located in a building on a medical campus with an acute care hospital was entitled to a “single facility” presumption, notwithstanding its location on a campus consisting of several buildings or its geographical proximity to several affiliated health care services, including an acute care hospital. The Board rejected the employer’s arguments that only a multi-facility unit was appropriate and noted the absence of factors that strongly militated in favor of a multi-site unit: i.e. regular interchange of employees, common supervision, and more complete and substantial integration of patient care facilities. Thus, in Visiting Nurses Association, the

medical campus itself was not accorded a “single facility” presumption, there was no presumption that the various medical entities located on the campus should be grouped together to form a bargaining unit merely because they were geographically close, and it was recognized that health care services located on a single campus could constitute separate entities and be separate appropriate bargaining units.

In the above cases, the Board was aware that a rule that made a campus-wide bargaining unit presumptively appropriate would conflict with existing rules regarding accretion and require that new health care services on a campus be improperly accreted into an existing bargaining unit (the issue in Passavant, 313 NLRB 1216 (1994)) or cause an existing bargaining unit to be extinguished based merely on a change in ownership rather than a substantial change in the operation of the entities involved (the issue in The University of Pittsburgh Medical Center, 313 NLRB 1341, 1342 (1994)). Further, the Board has recognized that the inclusion of separate health care entities with an acute care hospital merely because they are located on the same medical campus is improper even in the absence of a past bargaining history (the issue in Visiting Nurses Association of Central Illinois, 324 NLRB 55 (1997)).

See also McLean Hospital Corporation, 309 NLRB 564 (1992), where employees of a psychiatric hospital comprised a separate bargaining unit where the hospital was located on a 240 acre campus with multiple buildings, some of which housed other services including research laboratories and a high school for disturbed adolescents. The other entities were acknowledged to be separate from the psychiatric hospital and the fact that they were located on the same campus as the psychiatric hospital was not discussed as a factor. Similarly, in Hartford Hospital, 318 NLRB 183 (1995), the Board found that a psychiatric hospital located on a 34 acre campus across the street from the 22 acre campus of an acute care hospital remained a separate appropriate bargaining unit after the merger of the psychiatric hospital and the acute care hospital.

Thus, the Employer’s argument that a “campus” bargaining unit consisting of Research Hospital and other separate Health Midwest health care services located on the Research

Hospital “campus” is a “single facility” is not only without legal support, it is directly contrary to established Board law. See Passavant, Visiting Nurses Association, and The University of Pittsburgh Medical Center, supra. As stated above, the Employer’s reliance upon the second Child’s Hospital case (310 NLRB 560) as authority for the proposition that a “single facility” may be *broader than a single acute care hospital* is clearly erroneous as the finding in the second Child’s Hospital case was that there was *only one entity present, and that entity was an acute care hospital*.

The Employer’s attempt to distinguish the Visiting Nurses Association by asserting that the medical campus in that case was split by state owned property is unconvincing. As discussed above, in The University of Pittsburgh Medical Center, the fact that two acute care hospitals shared a medical campus and were housed in buildings connected by walkways, bridges, and tunnels did not constitute sufficient basis to combine the two acute care hospitals into a single bargaining unit when the two hospitals maintained separate identities. Moreover, the Employer’s attempt to distinguish Visiting Nurses Association illustrates that the concept of medical “campus” itself is not clear and subject to multiple factual variations.

In other cases, the Board has found that entities located on the same campus could not be separated into separate bargaining units, but the Board based its decision upon an initial identification of the separate employer entities and a secondary determination of whether a multi-facility bargaining unit was appropriate. See Lutheran Welfare Services of Northeastern Pennsylvania, Inc., 319 NLRB 886 (1995) (two nursing homes located 100-200 feet apart on a single “campus” were an appropriate multi-facility bargaining unit).

d) PRIMACY OF THE RULE / “SINGLE FACILITY” IS “SINGLE ACUTE CARE HOSPITAL”

Both before and after the enactment of the Rule in 1989, the Board held that a single-facility unit is presumptively appropriate in the health care industry where there is no history of multi-facility bargaining. See Manor Healthcare Corp., 285 NLRB 224 (1987); Mercy Health Services North, 311 NLRB 367 (1993).

The Rule itself establishes that a *single acute care hospital* is an appropriate bargaining unit. The Rule completely disregards whether the single acute care hospital is located in a single building, in multiple buildings, or in a building(s) connected to other buildings by walkways or other methods. Given the clear primacy of the Rule in bargaining unit determinations in acute care hospitals, any confusion regarding the application of the “single facility” presumption with regard to an acute care hospital must be resolved to recognize: 1) the presumption established in the Rule that a single acute care hospital is an appropriate bargaining unit regardless of whether the acute care hospital is housed in one or more than one building; and 2) the standard that an acute care hospital is not to be combined with separate non-acute care entities absent “extraordinary circumstances”.

Thus, whatever the “single-facility” presumption is deemed to mean in a non-acute care hospital setting, in an acute care hospital setting, the “single-facility” presumption must mean “single acute care hospital” regardless of whether the acute care hospital is housed in one building, in multiple buildings, or in building(s) connected to other buildings.

Given the Rule’s presumption that a bargaining unit co-extensive with a single acute care hospital is appropriate, the initial inquiry is a determination of the parameters of the acute care hospital, Research Hospital. Only after the scope of Research Hospital itself is established can the secondary issue, i.e. whether employees of Research Hospital must be combined with any other acute care or non-acute care entity into a single bargaining unit, be addressed.

3. STANDARD TO DEFINE SINGLE ACUTE CARE HOSPITAL

Although the Rule establishes that a single acute care hospital is a presumptively appropriate bargaining unit, the Rule does not specifically discuss the criteria or standard for determining the parameters of a single acute care hospital. There is little Board law specifically addressing how the parameters of a single acute care hospital are defined and determined when those parameters are contested.

I find that the correct approach to determine the scope of a single acute care hospital is to examine the following factors: geographic location of the service, the functional relationship of the contested health care service with the operations of the acute care hospital, the functional relationship of the contested health care services with operations of entities other than the acute care hospital, how exclusive the relationship between the contested health care service and the acute care hospital is, i.e. does the contested health care service provide similar services to other acute care hospitals or non-acute care services, and whether the contested entity or service is functionally related to services of an acute care hospital, and whether the services offered by the entity are essentially separate or stand-alone services from the acute care hospital.

For the reasons discussed in more detail below, I reject various other suggested methods or approaches for determining the scope of a single acute care hospital.

a) MEDICARE REIMBURSEMENT REGULATIONS / JOINT ACCREDITATION

Because the Rule incorporates the Medicare Act definition of “hospital”, the Employer contends that the Medicare Act’s reimbursement regulations regarding which health care services may be claimed as “hospital-based” determine or define the parameters of an acute care hospital. (Section 103.30(f)(1) of the Rule provides that “hospital” is defined in the same manner as defined in the Medicare Act. Section 103.30(f)(2) defines “acute care hospital”). The Board did not rely upon the Medicare Act for the definition of “acute care hospital” and the fact that the Board used the same definition of “hospital” as the Medicare Act does not make bargaining unit determinations in acute care hospitals (or other hospitals) dependent upon regulations regarding Medicare reimbursement.

Whether a health care service is designated as a “hospital-based” provider or an independent service for the purpose of seeking Medicare reimbursement depends, in part, on which designation maximizes reimbursement to the employer rather than upon a determination of the actual parameters of a specific acute care hospital. The designations

of which services are “hospital-based” change with changes in Medicare reimbursement regulations. For an example, Health Midwest’s Visiting Nurses Association was at one time considered a “department” of Research Hospital for Medicare reimbursement purposes but now is considered an independent service. There is no evidence that the change in designation was in any way related to a change in the actual operation or location of the Visiting Nurses Association.

Moreover, Medicare regulations prohibit reimbursement for the services performed by the Rural Physicians Network, which I have found to be a department within Research Hospital based on the fact that these employees work exclusively within Research Hospital’s main building at 2316 East Meyer Boulevard and their work relates directly to inpatient care within Research Hospital.

The Board has rejected the approach of using governmental determinations regarding Medicare reimbursement or common provider numbers, or joint accreditation, as the determinative factor in determining the scope of an acute care hospital. In Staten Island University Hospital, 308 NLRB 58 (1992), two acute care hospitals located on separate campuses eight miles apart merged and were thereafter operated by a single corporation. The two acute care hospitals shared a single budget, a single accreditation, *and a single reimbursement provider number*. See Staten Island University Hospital, supra at 59. However, the Board recognized that each “division” or campus continued to be a separate appropriate bargaining unit under that “single facility presumption”.

I reject the Employer’s contention that Medicare reimbursement regulations, professional accreditation regulations, or the regulations of any governmental entity other than the National Labor Relations Board are determinative of the scope of the appropriate bargaining units in an acute care hospital.

b) CORPORATE OWNER

It is axiomatic that one corporation may operate multiple acute care hospitals or operate multiple health care services and that the scope of the corporation itself does not

determine the scope of each separate entity or service or the scope of the appropriate bargaining unit. In Staten Island University Hospital, 308 NLRB 58 (1992), one corporation, known as Community Health System of Staten Island, Inc. (CHS), operated two acute care hospitals located on separate campuses eight miles apart. The Board found that each of the two hospitals constituted a separate appropriate bargaining unit notwithstanding the fact that the two hospitals shared a single budget, single accreditation, a single reimbursement provider number, and were recognized by the government as comprising two divisions of a single hospital. See Staten Island University Hospital, supra at 59. In Staten Island University Hospital, at 61, the Board noted: “The Board has long held that a single-facility unit geographically separated from other facilities operated by the same employer is presumptively appropriate for the purpose of collective bargaining, even though a broader unit might also be appropriate. It has also applied such a rebuttable presumption as to the appropriateness of a single facility unit in the health care industry, even after taking into account Congress’ concern, as reflected in the legislative history of the 1974 amendments to the Act, with preventing undue proliferation of units in that industry.”

Thus, Research Hospital is not defined by the scope of all health care services currently offered by its immediate corporate owner, Hospital Corporation of America Research Medical Center, or by the corporate owner of that corporation. The fact that the name of the acute care hospital Research Hospital (sometimes called Research Medical Center) reflects the name of its immediate corporate owner, Hospital Corporation of America Research Medical Center, does not establish a complete identity between the corporation and the acute care hospital or establish that all health care services owned and operated by the corporation are a part of the acute care hospital known as Research Hospital.

The multiplicity of corporate arrangements and health care services offered by a large health care system such as Health Midwest only accentuates difficulties that arise when the corporate entity is confused with the separate facilities or entities that operate under its corporate name. Thus, the Employer asserts that all of its various operations and services essentially constitute a single employer, which negates the importance of which

corporation a particular hospital or other health care entity operates. Further, the Employer may assign, group, or change the immediate corporation under which a particular health care service within its system operates and the assignment of the health care service to a particular corporation may not be reflective of the appropriate grouping for purposes of collective bargaining. For example, the record establishes that Trinity Family Medicine Center was recently assigned to the corporation now known as Hospital Corporation of America Research Medical Center, and in 2004 will be assigned to the corporation known as Baptist Medical Center.

The Board has recognized the fact that commonly owned corporations in a health care system do not require that the appropriate bargaining unit be co-extensive with the breadth of the health care system itself. See O'Brien Memorial, Inc., 308 NLRB 553 (1992) (Board found a single nursing home should be afforded the single-facility presumption "when there is no history of multi-facility bargaining and the degree of functional integration with other facilities is not sufficient to destroy the separate identity of the facility that the union seeks to represent" in a system of 7 commonly owned nursing homes located in a 20 miles area).

The holdings in Staten Island University Hospital and O'Brien Memorial, Inc. are not contrary to the holding in Brattleboro Retreat, 310 NLRB 615 (1993). In Brattleboro Retreat, the Board affirmed the finding of the Regional Director that a unit consisting of all non-professional employees employed in two non-acute care facilities, a psychiatric hospital and a nursing home constituted an appropriate unit. The Regional Director based his determination on alternative theories: first, that the two non-acute care facilities were actually a single facility, and in the alternative, that a multi-facility bargaining unit consisting of the psychiatric hospital and the nursing home was appropriate. Thus, the decision in Brattleboro Retreat was not based on the corporate structure or relationship of the psychiatric hospital and the nursing home, but, rather, was based on a finding that the psychiatric hospital and the nursing home were functionally integrated, had common or shared supervisors, and that employees transferred between the two entities and had contact with each other.

Moreover, in Child's Hospital, 307 NLRB 90 (1992), the Board found that three separately incorporated health care services (a hospital, a nursing home, and a service center) constituted a "single facility", i.e. a single acute care hospital where the operations were contiguous (in a single building), there was considerable integration of operations (including admissions and lab work), and a high degree of contact between employees. At 307 NLRB 90 at 91-92, the Board stated "it is undisputed that the nursing home, hospital, and Samaritan Service constitute a single employer. We find that the evidence also establishes that the nursing home, hospital and Samaritan are sufficiently integrated, both physically and operationally, as to require that they be treated as a single facility". Accordingly, in Child's Hospital, multiple corporations were determined to operate as one single acute care hospital.

For the above reasons I reject the Employer's position that the current designation of certain services as under the control of Hospital Corporation of America Research Medical Center, the corporate parent of Research Hospital, is determinative of the scope of the acute care hospital Research Hospital.

c) SINGLE BUILDING / CONNECTED BUILDINGS / CAMPUS

As set forth above in discussions of two Child's Hospital's cases at 307 NLRB 90 (1992) and 310 NLRB 560 (1992), The University of Pittsburgh Medical Center, 313 NLRB 1341, 1342 (1994), Visiting Nurses Association of Central Illinois, 324 NLRB 55 (1997), Children's Hospital of San Francisco, 312 NLRB 920 (1993), and other cases cited above, there is no basis in Board law to automatically define an acute care hospital as limited to a single building; define an acute care hospital by the buildings that are "attached" or connected to its main building by "walkways, bridges, or tunnels"; or by the health care services that happen to be geographically located within several blocks of the acute care hospital or located on the hospital "campus". This approach is expressly rejected by the Board in The University of Pittsburgh Medical Center, 313 NLRB 1341, at 1342 where the Board found that two acute care hospitals located on a single campus remained separate entities: "Although Presbyterian's and Montefiore's facilities are near

each other; some Montefiore buildings are closer to Presbyterian than some of Presbyterian's buildings are to each other; *and some buildings are connected by walkways, bridges, or tunnels*; this proximity has not substantially impacted on the operation of the existing unit" (emphasis supplied).

I find that the attempt to define the scope of an acute care hospital based on the happenstance of real estate configurations is contrary to the letter and spirit of the Rule. I also note from observation that many, if not most, acute care hospitals (as well as other entities) are housed in multiple buildings located adjacent to each other. *Thus, to hold that an acute care hospital is entitled to the single acute care hospital presumption established by the Rule only when the hospital is housed in a single building is to exclude the application of the Rule to many acute care hospitals.* Moreover, when an acute care hospital is housed in multiple buildings, the determination of the scope of the hospital itself based on a building by building analysis creates the possibility of multiple bargaining units within a single acute care hospital, a result contrary to both the Rule and to Congressional intent regarding the proliferation of bargaining units within a single acute care hospital.

Formulas based on a single building, multiple connected buildings, or a medical campus not only do not establish clarity but open the litigation to collateral definitional issues, e.g. (1) when is a building configuration a single building or multiple buildings? (2) what is a sufficient walkway, bridge, tunnel or other connection between separate buildings? (3) how is a medical campus defined? (4) does it make a difference if the campus is dissected by state property? (an argument raised by the Employer here in an attempt to distinguish Visiting Nurses Association of Central Illinois, 324 NLRB 55 (1997), from the facts here); and (5) when do two medical campuses that are adjacent to each other remain separate? (see The Children's Hospital of San Francisco). These formula approaches were rejected by the Board in The University of Pittsburgh Medical Center, 313 NLRB 1341, 1342 (1994) in favor of a determination of whether there are separate entities present that maintain separate identities. Moreover, such formulas would require that any new health service on a medical campus, or in a building where other

health care services are located, would be automatically considered an accretion to the existing acute care hospital unit on the campus or in the building regardless of whether or not the service was related to the acute care hospital. Finally, formulas such as a “campus” unit or a “building” unit do not address the issues raised when the medical entity has multiple offices, only one of which is on the medical “campus” (the issue raised here by the Diabetes Center of Health Midwest) or in the building.

d) MULTI-FACILITY TEST NOT APPLICABLE

The multi-facility test (described in detail in the following section) is designed to determine whether the presumption that a “single-facility” healthcare bargaining unit is appropriate. The “multi-facility” test is not designed to define the “single-facility” itself or to determine the parameters of an acute care hospital that is housed in more than one building or to determine which health care services on a medical campus are appropriately classified as part of the acute care hospital itself.

However, in cases where the Board has not expressly focused upon the definition of the scope of the employer as an initial step in its analysis, it can appear that the “multi-facility” test is used to determine or define the scope of the employer itself. For example, in Visiting Nurses Association of Central Illinois, 324 NLRB 55 (1997), despite the fact that the issue was whether the visiting nurses association was a department, i.e. a part of an acute care hospital, the Board initially found that the visiting nurses association “building constitutes a “single facility” and we apply the presumption that a single-facility healthcare unit is appropriate”. Therefore, the Board essentially assumed the issue, that the Visiting Nurses Association was a separate entity from the acute care hospital(s) on which campus it was located, noting that the Visiting Nurses Association was located in a separate building. The Board then applied the “multi-facility” test to find that the employer had failed to rebut the single-facility presumption that the Visiting Nurses Association was a separate appropriate bargaining unit.

The following questions appear to be raised by the Board’s decision in Visiting Nurses:

(1) Is the Board’s finding that Visiting Nurses Association is separate from the acute

care hospital based only on the fact that the Visiting Nurses Association is located in a separate building from the hospital or upon the apparent finding that the Visiting Nurses Association is a distinct service or entity from the hospital? (2) If the Visiting Nurse Association is actually a distinct entity from the hospital, would the result in Visiting Nurses Association be different if the Visiting Nurses Association happened to be housed in more than one building on the hospital campus? (3) Why should the happenstance of the real estate that the Visiting Nurses Association occupies determine whether it is a separate entity from an acute care hospital? (4) If the Visiting Nurses Association is currently housed in one building but expands into a part of an adjacent campus building next year, does a different unit determination result? and (5) Should the end result be different in Visiting Nurses Association if the analysis started by the observation that the acute care hospital itself was in multiple buildings? It is submitted that the core decision in Visiting Nurses Association is the Board's recognition that a Visiting Nurses Association located on the same medical campus as an acute care hospital can be separate from the acute care hospital.

See also Hartford Hospital, 318 NLRB 183, 191, (1995) where a multi-facility test was used to determine that a psychiatric hospital that merged with an acute care hospital remained a separate entity from the acute care hospital.

The use of the multi-facility test to determine or define a particular entity can confuse the distinction in determining the boundaries of a single acute care hospital from that of determining whether a single acute care hospital should be combined with other separate entities. These are separate issues that require different considerations and have different burdens of proof. For, example, the multi-facility test does not appear sufficient or designed to address the issue of whether the Child Development Center, the Nursing College, or the various offices of the Diabetes Center of Health Midwest are actually part of Research Hospital itself.

e) COMMUNITY OF INTEREST / AN APPROPRIATE UNIT

The Petitioners argue that they do not need to seek an election in the most comprehensive or the most appropriate bargaining unit, but may simply seek an election in “an appropriate bargaining unit”. The Petitioners further argue that, since the Petitioners have requested an appropriate bargaining unit, the Employer bears the burden of demonstrating that the bargaining unit selected by the Petitioners is inappropriate. The Petitioners, as suggested by the Board at page 2 of the November 4, 2002 remand, rely upon the application of traditional community of interest factors to support their position regarding the scope of the bargaining unit. Accordingly, the Petitioners do not focus upon a definition of Research Hospital itself but, rather, upon which health care functions within Research Hospital and outside the hospital have a community of interest with the employees within Research Hospital that the Petitioners seek to include in the bargaining units.

Although the Petitioner’s articulation of the law may be accurate in cases that do not involve acute care hospitals, the Rule has established that the appropriate bargaining unit in an acute care hospital is to be no less than the entire operations of the acute care hospital. Non-acute care functions and services performed by an acute care hospital may not be carved out of the acute care hospital bargaining unit. Moreover, the Rule establishes that a bargaining unit consisting of a single acute care hospital is presumed appropriate.

Accordingly, I reject the Petitioners’ position to the extent that it argues that health care functions or services offered by Research Hospital may be separated or excluded from the Research Hospital bargaining unit on the basis of community of interest. I note that traditional community of interest standards are not necessarily helpful in determining the limits or scope of the entity known as Research Hospital. To the extent that the Petitioners’ argument amounts to a contention that a bargaining unit co-extensive with Research Hospital is presumptively appropriate and that the Employer has the burden of

establishing that a broader bargaining unit is appropriate, I agree with the Petitioners' position.

4. MULTI-FACILITY ANALYSIS WITH REGARD TO ACUTE CARE HOSPITALS

a) "Extraordinary Circumstances" Standard and "Multi-Facility" Standard

After the parameters of the acute care hospital known as Research Hospital are determined, the next consideration is whether the employees of Research Hospital must be combined with the employees of other health care entities which are separate from the acute care hospital in a "multi-facility" bargaining unit.

There are two separate standards for "multi-facility" bargaining units that include an acute care hospital with other entities. One standard, the "extraordinary circumstances" standard established by the Rule, is applicable when the proponent seeks to include an acute care hospital and separate non-acute care entities in a single bargaining unit. In the Rule, the Board stated that the "extraordinary circumstances" exception to the "single acute care hospital" presumption is to be construed narrowly. The party seeking to demonstrate extraordinary circumstances has the "heavy burden" of showing that its arguments are substantially different from those considered by the Board during the rulemaking process. The Board defined "extraordinary circumstances" as circumstances not considered by the Board in its rulemaking process. 284 NLRB 1573-1574.

The second standard, the "multi-facility" standard, is applicable when the proponent seeks to combine more than one acute care hospital into a single bargaining unit (or to combine the employees of multiple non-acute care entities into a single bargaining unit). See for example University of Pittsburgh Medical Center, 313 NLRB 1341 (1994) (two acute care hospitals); Children's Hospital of San Francisco, 312 NLRB 920 (1993) (two acute care hospitals each located on a separate "campus"); Staten Island University Hospital, 308 NLRB 58 (1992) (insufficient evidence to find two acute care hospitals in Staten Island merged so that existing separate bargaining units at each acute care hospital

are inappropriate); Lutheran Welfare Services, 319 NLRB 886 (1995) (two nursing homes located 100-200 feet apart are found to be appropriate multi-facility unit); First Security Services Corp., 329 NLRB 235 (1999) (guard unit at “single facility” consisting of a hospital and a satellite location five miles away found to be appropriate).

The “multi-facility” standard considers the following factors in determining whether a “single-facility” presumption has been rebutted: 1) the geographical proximity of the proposed multi-facility unit, 2) the similarity in skills and functions of employees, 3) the similarity of employment conditions, 4) administrative centralization, 5) common managerial and supervisory control, 6) employee interchange, 7) the functional integration of the facilities, and 8) bargaining history. Hartford Hospital, 318 NLRB 183, 191 (1995) The critical factors that militate in favor of a multi-facility unit are: 1) regular interchange of employees, 2) common supervision, and 3) a substantial integration of patient care facilities. Visiting Nurses Association of Central Illinois, 324 NLRB 5, at 56 (1997). The Board has consistently found a single-facility unit to be presumptively appropriate when there is no history of multi-facility bargaining and the degree of functional integration with other facilities is not sufficient to destroy the separate identity of the facility that the union seeks to represent. O’Brien Memorial, Inc., 308 NLRB 553, at 553 (1992), citing Samaritan Health Services, Inc., 238 NLRB 629 (1978), National G. South, Inc., 230 NLRB 976 (1977), and Saint Anthony Center, 220 NLRB 1009 (1975). In the absence of substantial evidence of regular contact and interchange among employees, the Board has found separate bargaining units appropriate even where there is central administrative control. Passavant Retirement & Health Center, 313 NLRB 1216, 1218 (1994); Catherine McAuley Health Center, 287 NLRB 1114, 1116 (1988). In Manor Healthcare Corp., supra, the Board held that the presumption that a single-facility unit is appropriate may be rebutted by substantial evidence: 1) of regular contact and interchange between the employees of the different facilities, and 2) that a single-facility unit would threaten to disrupt the continuity of patient care that Congress sought to prevent in the health care industry. Regarding an acute care hospital, the “single-facility” presumption set forth above must be read to be “single acute care hospital”. See also West Jersey Health System, 293 NLRB 749 (1989) (single facility unit not appropriate where there was centralization of labor relations, evidence of permanent interchange of

employees, functional integration, and the possibility of adverse consequences at one facility by the interruption of services at the other facility).

In First Security Services Corp., 329 NLRB 235 (1999), at 236, the Board stated that the absence of interchange of employees between facilities is “a critical factor in assessing whether the single-facility presumption has been rebutted”. The Board also noted at 236, fn. 5 that “voluntary transfers, such as those transfers initiated by employees for personal convenience or benefit, are of limited significance”. The Board also noted at 237 that site specific day-to-day supervision shows significant local autonomy. In the absence of a significant level of interchange of employees between multiple facilities and where site-specific supervision existed, the Board found insufficient “basis to overcome the strong evidence of community of interest among the Bridgeport Hospital guards and our longstanding policy of presuming that a unit limited to employees at a single facility is appropriate” notwithstanding evidence of centralized control of the employer’s operations and of labor relations.

b) Application of Board Law Here

Given the presumption established by the Rule that a single acute care hospital constitutes an appropriate bargaining unit, an initial determination must be made as to which acute-care and non-acute services or facilities are part of Research Hospital.

With respect to acute care hospitals that are separate from Research Hospital, the Employer has the burden of establishing under a “multi-facility” test that the presumptively appropriate bargaining unit established by the Rule is not appropriate.

With respect to non-acute care facilities that are separate entities from Research Hospital, the Employer has the burden of establishing the existence of “extraordinary circumstances” to warrant including such non-acute care facilities in the same bargaining unit as Research Hospital.

If “extraordinary circumstances” exist that require the combination of employees of Research Hospital and employees of any separate non-acute care health service in a single bargaining unit which results in taking the unit scope determination outside the Rule, bargaining units limited to registered nurses or limited to professional employees is no longer determined by the Rule and the scope of the units is open to adjudication. See Section 103.30 (b)

VIII. DETERMINATION OF DEFINITION/SCOPE OF RESEARCH HOSPITAL

A. SUMMARY OF DETERMINATION

The parties stipulated that Research Hospital is an acute care hospital located at 2316 East Meyer Boulevard, Kansas City, Missouri. Based on a review of the record evidence, and as explained in detail below, I find that the acute care hospital known as Research Hospital includes the following operations or services in addition to the operations housed in the 2316 East Meyer Boulevard building: 1) all services or functions of the Transplant Institute including those performed in Research Hospital’s main building at 2316 East Meyer Boulevard and those performed in the Transplant Institute’s outpatient clinic located at 6400 Prospect, Kansas City, Missouri; 2) all operations or functions of the Communications Disorders Center including those performed in Research Hospital’s main building at 2316 East Meyer Boulevard and those performed in the outpatient clinic located at 2300 East Meyer Boulevard, Kansas City, Missouri; 3) the Child Development Center located in a separate, freestanding building from the main hospital building at 2316 East Meyer Boulevard but with no separate street address; and 4) the Nursing College located at 2300 East Meyer Boulevard, Kansas City, Missouri.

I find that The Diabetes Center of Health Midwest, including the office located at 2188 East Meyer Boulevard, Kansas City, Missouri on the “campus” of Research Hospital, the Diabetes Center of Health Midwest office located at 2400 R.D. Mize Road, Independence, Missouri across the street from Health Midwest Independence Region’s MCI Hospital, and the Diabetes Center of Health Midwest office located at 12200 West 106th Street, Overland Park, Kansas in a building behind Health Midwest Johnson County

Region's Overland Park Regional Hospital, as well as the other two Diabetes Center of Health Midwest offices located at acute care hospitals in Lexington, Missouri and in Chillicothe, Missouri, are not part of the acute care hospital known as Research Hospital. I also find that the Trinity Family Medicine Center located at 2900 Baltimore, Kansas City, Missouri and Research-Belton Hospital located at 1705 South 71 Highway, Belton, Missouri, are separate entities from the acute care hospital known as Research Hospital and are not included within the definition or the scope of the acute care hospital known as Research Hospital.

B. EXPLANATION OF DETERMINATION OF SCOPE OF RESEARCH HOSPITAL

1. TRANSPLANT INSTITUTE

a) Facts

The Transplant Institute is Health Midwest's kidney transplant program and performs 30-50 kidney transplants annually. All transplant surgeries and immediate post-operative care of transplant patients takes place in Research Hospital in the 2316 East Meyer Boulevard building. No other Health Midwest hospital performs kidney transplants.

The Transplant Institute maintains an outpatient clinic in Suite 328 of the 6400 Prospect building located immediately to the north of Research Hospital's main building at 2316 East Meyer Boulevard. The 6400 Prospect building is connected to the Research Hospital building at 2316 East Meyer by a hallway that goes directly from the 6400 Prospect building to Level A of the 2316 East Meyer building. The outpatient clinic is open 8 a.m. to 4:30 p.m. Monday through Friday.

The Transplant Institute outpatient clinic in Suite 328 of the 6400 Prospect building includes a reception area, a front office, a medical records room, a nurse's station, four patient examination rooms, several offices, and a conference room. Transplant Institute employees either use the conference room for breaks or go to the cafeteria at the hospital.

The Transplant Institute is managed by Medical Director Dr. Ader and Program Director Diane Babbitt. Dr. Ader is a transplant surgeon. Ms. Babbitt is not a registered nurse. Registered nurses employed in the Transplant Institute are not subject to the supervision of Dana Dye, the Director of Nursing for Health Midwest Central Region. Initial screening for hiring is done by the Human Resource Department and employment interviews and hiring decisions are made by Dr. Ader and Ms Babbitt. It appears that Dr. Ader reports to Kevin Hicks, the SEO of Research Hospital.

Employed in the Transplant Institute are transplant surgeons, registered nurses classified as either transplant coordinators or transplant clinicians, a secretary II /receptionist, a medical secretary, a lab clerk, and a social worker.

Registered nurses classified as transplant coordinators: conduct pre-transplant patient education regarding kidney transplants, take new patients' medical history, conduct the initial physical examination of the patient, coordinate the various medical tests and evaluate whether the patient should be accepted as a candidate for a kidney transplant, contact the United Network of Organ Sharing to attempt to find a kidney for the patient, keep the patient's records updated during the period that the patient is waiting for a kidney, coordinate and schedule the transplant surgery once a kidney is located including conferring with the transplant surgeon, are present at Research Hospital when the transplant surgery is performed in order to be able to meet with the patient's family during surgery to update the family regarding the course of the surgery, may assist taking pictures during the transplant surgery, may return to the hospital for a post-transplant courtesy visit with the family of the transplant patient, and may go to the hospital to retrieve medical records and schedule work. Most of the work of the transplant coordinators is performed in the Transplant Institute Clinic's outpatient clinic in Suite 328 of the building at 6400 Prospect, and only approximately five percent of the transplant coordinators' work time is spent in the main hospital building at 2316 East Meyer Boulevard.

During the transplant surgery, the transplant clinicians work on teams with registered nurses from other departments of Research Hospital to assist the transplant surgeon in the operating room. Transplant clinicians also monitor the in-patient post-transplant patient during their hospitalization at Research Hospital immediately following transplant surgery, monitor the post-transplant patient after the patient's release from the hospital so that the patient's immune system will not reject the transplanted kidney, and assist in outpatient surgery performed in the Transplant Institute Clinic such as a biopsy or a removal of a lesion on the transplanted kidney. Transplant clinicians conduct routine outpatient monitoring of post-transplant patients that continues for the life of the transplanted kidney. Transplant clinicians oversee the needs of the post-transplant patient with regard to the transplanted kidney when the post-transplant patient is hospitalized at Research Hospital for treatment for non-transplant related medical issues. Approximately 50 % of the transplant clinicians' time is spent working within the main hospital building at 2316 East Meyer Boulevard.

The secretary II/ receptionist acts as a receptionist; the medical secretary transcribes medical consultations; the lab clerk receives by fax the results from medical tests conducted at various medical laboratories and enters the results on patient charts; the social worker evaluates transplant patient candidates and works with the patients regarding financial issues. The secretary II/Receptionist, the medical secretary, and the lab clerk work exclusively in the Transplant Institute's outpatient clinic in Suite 328 at the 6400 Prospect building. In addition to working at the Transplant Institute's outpatient clinic, the social worker performs social work at the building located at 2316 East Meyer Boulevard including: works one day a week in the dementia clinic in Research Hospital, takes on-call rotation in the Case Management Department in Research Hospital, and performs other social work in Research Hospital.

The Transplant Institute uses letterhead that reads "Transplant Institute at Research Medical Center" and carries the Health Midwest insignia. Employees wear badges that read "Research Medical Center-Health Midwest" and have the Health Midwest logo.

There is a direct phone line between the Transplant Institute Clinic and the hospital.

b) Determination

The additional evidence submitted at the February 2003 hearing confirms the initial decision that the Transplant Institute is properly considered a part of the acute care hospital known as Research Hospital. The service offered by the Transplant Institute, kidney transplantation, is intrinsically an acute care service. Some employees of the Transplant Institute work in both Research Hospital's main building at 2316 East Meyer Boulevard building and the outpatient clinic located in Suite 328 in the building located at 6400 Prospect, and thus have regular and substantial contact with employees within Research Hospital. All of the work of the Transplant Institute is performed either within Research Hospital's main building at 2316 East Meyer Boulevard or within the Transplant Institute's outpatient clinic in Suite 328 of the building located at 6400 Prospect which is adjacent to the 2316 East Meyer Boulevard building.

The Transplant Institute exists both within Research Hospital's main building at 2316 East Meyer Boulevard and at the outpatient clinic located at 6400 Prospect. The Transplant Institute appears to be completely integrated with Research Hospital and is the departmental name for the kidney transplant program at Research Hospital. The entire outpatient clinic is closely related to the core acute care service offered by The Transplant Institute, i.e. the pre-transplantation screening and the post-transplantation monitoring that is an essential aspect of the kidney transplant acute care service performed exclusively within Research Hospital. Consequently, there is no basis for separating the outpatient clinic functions of the Transplant Clinic from the functions of the Transplant Clinic that are performed within the hospital's main building. There is no evidence that the Transplant Institute functions with any acute care hospital other than Research Hospital.

Based on the record evidence, I find that the Transplant Institute, including its outpatient clinic located in Suite 328 at the 6400 Prospect building, is part of the acute care hospital known as Research Hospital. Contrary to the assertion of the Employer made at page 25

of its Request for Review in Case 17-RC-12076, I do not include the employees of the Transplant Institute in the same bargaining unit as employees of Research Hospital because the Petitioner-Nurses wants the Transplant Institute included. Rather, I include these employees in the Research Hospital bargaining unit because I find, in agreement with the Employer's contention at both the initial hearing and in the February 2003 hearing, that The Transplant Institute is a part of Research Hospital, and not a separate facility or entity from Research Hospital.

2. COMMUNICATIVE DISORDERS CENTER

a) Facts

Additional evidence produced at the February 2003 hearing establishes that The Communicative Disorders Center is physically located in both Research Hospital's main building at 2316 East Meyer Boulevard and the building at 2300 East Meyer Boulevard which is located immediately west of the 2316 East Meyer building. The 2300 East Meyer Boulevard building also houses the Nursing College. The 2300 East Meyer Boulevard building is connected by an underground walkway to Research Hospital's main building at 2316 East Meyer Boulevard.

The Communicative Disorders Center provides outpatient services at its clinic at 2300 East Meyer Boulevard and within Research Hospital's main building at 2316 East Meyer Boulevard. Evidence produced at the February 2003 hearing also establishes that employees of The Communicative Disorders Center regularly provide inpatient services within Research Hospital's main building at 2316 East Meyer Boulevard. Patients with a variety of conditions affecting speech and hearing including stroke, cancer, degenerative muscular diseases, pulmonary problems, and neurology problems, require the services offered by employees of the Communicative Disorders Center.

The Director of the Communicative Disorders Center is Evelyn Hagerman. Hagerman reports to Kevin Hicks, the Senior Executive Officer of Research Hospital. Under

Hagerman are two supervisors: Evelyn Suka-Davis, Supervisor of Speech Pathology, and Dr. Don Bender, Supervisor of Audiology.

Approximately 20 non-supervisory employees are employed at the Communicative Disorders Center: 13 speech pathologists, 4 audiologists, and 3 communicative disorders assistants, one of which is an on-call employee. No registered nurses are employed in the Communicative Disorders Center. At the initial hearing the parties stipulated that the communicative disorders assistants are properly classified as non-professional employees.

Within Research Hospital's main building at 2316 East Meyer Boulevard, the Communicative Disorders Center maintains a Voice and Swallowing Care Center containing extensive diagnostic testing equipment, a Neurophysiology Lab used by audiologists, and six employee offices. Some of the testing performed within Research Hospital's main building at 2316 East Meyer Boulevard is performed on an out-patient basis. The employee offices in Research Hospital's main building house 9 of the 13 speech pathologists and one of the two full-time communicative disorders department assistants. The Communicative Disorders Center employees, including the communicative disorders department assistants, work with physicians from a variety of medical specialties including eye, ear, and nose specialists, radiologists, family practice, internal medicine, neurology, pediatrics, and neonatology in performing speech and audiology testing and diagnostics in Research Hospital. Employees of the Communicative Disorders Center, especially speech pathologists and to a lesser extent audiologists, use mobile diagnostic equipment to go to all floors of Research Hospital's main building at 2316 East Meyer Boulevard, including ICU and NICU, to perform inpatient care testing and services at patients' bedsides. Supplies needed for speech pathologists to treat inpatients in Research Hospital are stored in various places within Research Hospital's main building and are regularly restocked by the communicative disorders department assistant officed in the Communicative Disorders Center outpatient clinic at 2300 East Meyer Boulevard. The audiologist officed in Research Hospital's

main building at 2316 East Meyer Boulevard trains registered nurses regarding routine audiology testing of newborns.

In the Communicative Disorders Center's outpatient clinic in the 2300 East Meyer Boulevard building are: an audiology suite where hearing tests are performed; an outpatient pediatric office where speech, language, and some hearing tests are performed on pediatric patients; a group treatment room for stuttering program; individual treatment rooms for the stuttering program; a medical records area; and some employee offices. Four of the 13 speech pathologists employed in the Communicative Disorders Center work primarily in the outpatient clinic at 2300 East Meyer Boulevard, although they perform some work within Research Hospital's main building at 2316 East Meyer Boulevard. Three of the four audiologists and one of the two full-time communicative disorders assistants work primarily in the outpatient clinic at 2300 East Meyer Boulevard.

All patients who receive services from the Communicative Disorders Center, including outpatient services performed in both the Communicative Disorders Center at 2300 East Meyer Boulevard and within Research Hospital are admitted as outpatients through the admission office at Research Hospital. The admissions paperwork originates from the admission office at Research Hospital's main building at 2316 East Meyer Boulevard and is picked up daily at Research Hospital by a communicative disorders assistant and brought back to the outpatient clinic. Research Hospital bills all patients for the services performed by the Communicative Disorders Center whether the services are performed in the 2300 East Meyer Boulevard clinic or are performed within the Research Hospital building located at 2316 East Meyer Boulevard.

The Communicative Disorders Center provides speech pathology and audiology services at Research-Belton Hospital through a clinic conducted each Tuesday and on an as needed basis. Four days a week a speech pathologist who specializes in pediatric services goes to Research Psychiatric Center to conduct a program designed to improve communicative skills available to the patients at that facility. When Communicative Disorders Center employees perform work at Research-Belton or at Research Psychiatric

Center, a “shared staffing” report is generated so that the employees’ time is charged to those health care entities.

Communicative Disorders Center Director Hagerman attends management meetings conducted by Kevin Hicks that are attended by the managers of the pulmonary, cardiology, radiology, food service, housekeeping, physical therapy, patient representative departments and other departments within Research Hospital. Hagerman also attends monthly management meetings that include the directors of nursing at Research Hospital. Communicative Disorders Center employees wear identification badges that read “Communicative Disorders Department, Research Medical Center”.

b) Determination

Additional evidence submitted at the February 2003 hearing establishes that the Communicative Disorders Center is a part of the acute care hospital known as Research Hospital. Accordingly, I reverse the determination made in the October 1, 2002, Decisions and find that employees of the Communicative Disorders Clinic are included in the bargaining unit of employees of Research Hospital. The Communicative Disorders Center is physically located both in Research Hospital’s main building at 2316 East Meyer Boulevard as well as in the 2300 East Meyer Boulevard Building adjacent to Research Hospital’s main building. Employees of the Communicative Disorders Center are assigned offices and regularly work within Research Hospital’s main building at 2316 East Meyer Boulevard. The work of Communicative Disorders Center employees includes both inpatient and outpatient services and Communicative Disorders Center employees have regular and substantial contact with other employees of Research Hospital.

Based on the record evidence which establishes: some Communicative Disorders Center employees and functions are located in Research Hospital’s main building; the integration of the patient care services offered by the Communicative Disorders Center with the acute patient care services performed within Research Hospital’s main building, and in the absence of other evidence establishing the Communicative Disorders Center

and Research Hospital are separate or distinct entities, I find that the Communicative Disorders Center, including its outpatient clinic located at 2300 East Meyer Boulevard, are part of the acute care hospital known as Research Hospital.

There are two full-time and one “on-call” employees employed in the Communicative Disorders Center who are classified as non-professional employees. Thus, the inclusion of the Communicative Disorders Center in the Research Hospital bargaining unit adds two (and possibly a third) employees to the bargaining unit of non-professional employees. There are no registered nurses employed in the Communicative Disorders Center.

3. CHILD DEVELOPMENT CENTER

a) Facts

Evidence produced at the February 2003 hearing established that the Child Development Center is a 10,000 square foot one story freestanding building built in 1982 to house a day care facility for children aged six weeks through kindergarden. The Child Development Center is located approximately one block to the west of the building at 2300 East Meyer Boulevard that houses the Communicative Disorders Clinic outpatient facility and the Nursing College. Although the Child Development Center is located in a freestanding building approximately one block west of the Research Hospital building at 2316 East Meyer Boulevard, the Child Development Center shares the same mailing address as the hospital. There is no sign in front of the Child Development Center to identify its function and the Child Development Center is accessed by a locked front door that requires a security code to enter.

The Child Development Center is licensed by the State of Missouri Department of Health and Senior Services under the name of “Research Medical Center d/b/a Research Medical Center Child Development Center”. Similarly, the Child Development Center is accredited by the National Association for the Education of Young Children under the name “Research Medical Center Child Development Center”. The Child Development

Center is licensed to care for 123 children full-time. The Child Development Center is open from 6 a.m. to 8 p.m. Monday through Friday, and 6:30 a.m. until 8:30 p.m. on Saturday. The Child Development Center's services are structured to accommodate the varied work schedules of Research Hospital's employees including registered nurses who typically work 12-hour shifts, and are scheduled 7 days a week. The Child Development Center charges for its services by the hour. Payment for the Child Development Center services is generally by payroll deduction. Research Hospital subsidizes the cost of the services provided by the Child Development Center to its employees.

The Child Development Center gives priority to enrolling children of employees on the bi-weekly payroll (full-time, part-time, and on-call) of Research Hospital in providing its services. Second priority is given to the children of students in the Research College of Nursing, volunteers and students in other Research-based educational programs. Third priority is given to children in "corporations affiliated with Research Medical Center who are eligible to use the Child Development Center". The Child Development Center does not provide services to the public. Most of the children currently enrolled in The Child Development Center are children of employees of Research Hospital.

The Child Development Center is managed by Director Patty Lierz Boresow. Boresow reports to Kevin Hicks, the SEO of Research Hospital. Boresow testified that the Child Development Center is considered a department of Research Hospital and that she attends regular management meetings with other Research Hospital managers. Other management officials at the Child Development Center are Program Coordinator/Assistant Director Christine Hipsher, and seven lead teachers who are considered supervisors.

Approximately 31 employees are employed in the Child Development Center including: 10 professionally degreed teachers, 18 non-degreed teachers called "assistant teachers", 2 cooks, and 1 secretary. There are no registered nurses employed in the Child Development Center. Housekeeping services, supplies, and laundry services to the Child Development Center are provided by non-professional employees employed within the

Research Hospital building located at 2316 East Meyer Boulevard. In the initial hearing, the parties stipulated that non-degreed teachers, cooks, and the secretary who work in the Child Development Center are classified as non-professional employees.

Child Development Center employees wear name tags that identify them as employees of “Research Medical Center”. There is a breakroom within the Child Development Center and Child Development Center employees are permitted to use the exercise room in the College of Nursing during break time. Research Hospital is reimbursed by Medicare for some of the expenses of operating the Child Development Center.

b) Determination

The additional evidence submitted at the February 2003 hearing confirms the initial decision that The Child Development Center is properly considered a part of the acute care hospital known as Research Hospital. The purpose of The Child Development Center is to support the employees of Research Hospital by providing for the distinctive child care demands created by the unique scheduling requirements demanded of the employees of an acute care hospital. While employees of The Child Development Center do not provide direct patient care services themselves, or interchange with employees who work in Research Hospital’s main building at 2316 East Meyer Boulevard, the core service or function of The Child Development Center is directly integrated with the operation of Research Hospital, and appears as intrinsically related to the hospital as an employee cafeteria or other employee support function. The Rule is clear that an acute care hospital includes its non-acute care services.

I find that the fact that The Child Development Center is located in a freestanding building separate from Research Hospital’s main building is not determinative of whether the Center is part of Research Hospital. Based on the record evidence, I find that The Child Development Center is properly considered a part of the entity known as Research Hospital as the purpose for the existence of the Center is to provide support to the employees of the hospital in the performance of their work within the hospital. Because The Child Development Center is part of Research Hospital, its employees are included

in the Research Hospital bargaining units regardless of the fact that the services provided by The Child Development Center are not acute care services or patient care services.

4. NURSING COLLEGE

a) Facts

The Nursing College is located in a two-story building at 2300 East Meyer Boulevard, immediately west of Research Hospital's main building at 2316 East Meyer Boulevard. Also located in the 2300 East Meyer Boulevard building is The Communicative Disorders Center outpatient clinic. The 2300 East Meyer Boulevard building is connected to Research Hospital's main building at 2316 East Meyer Boulevard by an underground walkway. The Nursing College utilizes classroom space and an auditorium on level B of the main building of Research Hospital at 2316 East Meyer Boulevard. Much of the clinical training of nursing students is conducted within Research Hospital. The Nursing College, in partnership with Rockhurst University, a private Jesuit university, offers a BSN nursing degree, and a Master's degree program for nurse practitioners. The Nursing College is governed through nine faculty committees, which are defined by the Nursing College's by-laws. The nine committees "govern" admission, progression, graduation, curriculum, evaluation, technology and learning, human subjects, scholarly activities, and faculty affairs. Health Midwest's Director of Patient Services-Education, Colleen Mall, currently sits on the undergraduate curriculum committee. In addition, representatives from Rockhurst University sit on the nine committees.

The Nursing College is not separately incorporated and does not have a Board of Directors separate from Research Hospital. An advisory board chaired by a member of the Board of Directors of Research Hospital is responsible for some matters regarding the operation of the Nursing College including issues related to accreditation, curriculum, and enrollment. The President and Dean of the Nursing College, Nancy DeBasio, reports to Kevin Hicks, the SEO of "Research Medical Center" who is responsible for the day-to-day operations of Research Hospital.

At the February 2003 hearing additional evidence was produced that Research Hospital received reimbursement from Medicare for some of the expenses of the Nursing College. In order for Research Hospital to qualify for reimbursement from Medicare, the Nursing College: 1) had to be located on the campus of Research Hospital; 2) had to receive at least 50% of its operating budget from Research Hospital; and 3) Research Hospital had to have four members of the Nursing College's governing board. The President and Dean of the Nursing College testified at the February 2003 hearing that the Nursing College was not separately incorporated from Research Hospital and that if the Nursing College were separately incorporated, Research Hospital could not qualify for Medicare reimbursement.

b) Determination

Before the 1989 enactment of the Rule, the Board issued several decisions which held that registered nurses employed at nursing colleges are included in the unit of registered nurses employed at the acute care hospital with which the nursing college is affiliated, even when the petitioner objects to their inclusion in the hospital bargaining unit. See The Presbyterian Medical Center, 218 NLRB 1266, 1267 (1975); Jersey Shore Medical Center-Fitkin Hospital, 225 NLRB 1191 (1976); Ohio Valley Hospital Assoc., 230 NLRB 604 (1977); Newton-Wellesley Hospital, 250 NLRB 409, 414 (1980); Long Island College Hospital, 256 NLRB 202, 207, fn.21 (1981). In these cases, the Board recognized that registered nurses employed in nursing colleges have a separate community of interest from staff nurses employed at an acute care hospital. However, in each case, the Board assumed that a nursing college is inherently part of the acute care hospital to which it is affiliated, and that if registered nurses employed at a nursing college were not included in a bargaining unit with registered nurses employed at the acute care hospital, the registered nurses employed at the nursing college would be included in the unit of professional employees employed at the acute care hospital. For example, in Long Island College Hospital, supra, at 207, fn.21 the Board noted that it accepted a stipulation by the parties that excluded the registered nurses employed at a nursing college from a bargaining unit of registered nurses employed in the affiliated acute care hospital and noted that acceptance of the stipulation did not conflict with the

congressional admonition against proliferation of bargaining units since registered nurses employed in the nursing college could be grouped with other health care professionals employed in the acute care hospital.

In Kirksville College of Osteopathic Medicine, 274 NLRB 794 (1985), the Board determined that a college of medicine was functionally integrated with an acute care hospital and that it was inappropriate to limit the bargaining unit to employees of the hospital and to exclude employees of the school of medicine. In Kirksville the Board expressly overruled Albany Medical College, 239 NLRB 853 (1978), which had permitted maintenance employees in a medical college to be excluded from a bargaining unit of maintenance employees employed at an affiliated acute care hospital because the medical college's primary purpose was deemed to be training and research rather than providing medical services. The Board in Kirksville treated the medical college and the acute care hospital as an single health care facility and noted that, although the college and the hospital were separately accredited, they were functionally integrated based on shared housekeeping, maintenance services, and common purchase of supplies.

The rulemaking process and the Rule did not appear to specifically consider the issue of whether a nursing or medical college may be considered a separate entity from the acute care hospital with which it is affiliated. All of the above-cited cases were decided before the Rule was enacted in 1989 and I am not aware of any post-rule cases considering the issue. (In Rhode Island Hospital, 313 NLRB 343 (1993), the Board refused to permit employees in a research department housed in the same facility as an acute care hospital to be excluded from the hospital-wide bargaining unit but the research department was not a nursing or medical college.)

In the October 1, 2002 Decisions, I considered that the above-captioned cases did not appear to have arisen in the context of a health care system in which groups of employees, including other registered nurses, remain unrepresented regardless of the placement of the employees of the nursing college in the same bargaining unit as the employees of the acute care hospital with which the college is affiliated. In those

circumstances, I determined that the Petitioners' preference that employees of the Nursing College be excluded should be given determinative weight because the exclusion of the Nursing College employees did not necessarily create a proliferation of bargaining units as there were other groups of unrepresented registered nurses within the Health Midwest system. See the Supreme Court decision in American Hospital Assn. v. NLRB, 499 US 606, at 610 (1991): "...read in the light of the policy of the Act, implies that the initiative in selecting an appropriate unit resides with the employees. Moreover, the language suggests that employees may seek to organize 'a unit' that is 'appropriate' not necessarily *the* single most appropriate unit".

Upon reconsideration, I find that the crucial issue is whether the Board considers a nursing college inherently to be part of the acute care hospital with which it is affiliated, and whether there are any circumstances where the Board considers a nursing college to be a separate entity from the acute care hospital with which it is affiliated. In the event that a nursing college is included within the definition of an acute care hospital, the bargaining unit must include both the college and the hospital regardless of the fact that: 1) registered nurses employed in a nursing college have a separate community of interest from registered nurses employed in an acute care hospital, and 2) the Petitioners do not seek their inclusion in the hospital bargaining units. The Rule makes it clear that the term "acute care hospital" is broad and includes non-acute care services provided by the acute care hospital. On the other hand, if the nursing college is a separate entity from the acute care hospital, the Rule has determined that a bargaining unit limited to the acute care hospital is appropriate regardless of unit proliferation concerns.

There appears to be no legal authority that considers whether a nursing college can ever be considered a separate entity from the acute care hospital with which it is affiliated or sets forth the relevant factors to base that determination. Case law that issued before the Rule appears to establish that the Board considers a nursing college to inherently be part of the acute care facility with which it is affiliated. The issue does not appear to have been revisited in either the Rule making process, the Rule itself, or in post-rule case law. In the absence of any legal authority establishing that a nursing college or medical

college may be separated from the acute care hospital with which it is affiliated, I reverse my October 1, 2002, determination and I now find that the Nursing College is part of the acute care hospital known as Research Hospital. In making this determination, I note that some teaching functions of the Nursing College occur in classrooms and in other areas of Research Hospital and that housekeeping and maintenance employees employed at Research Hospital are responsible for the building located at 2300 East Meyer Boulevard which houses the Nursing College. Accordingly, I find that the Nursing College is part of Research Hospital and that employees employed in the Nursing College are appropriately included in the bargaining units of registered nurses and non-professional employees employed by Research Hospital.

The inclusion of Nursing College employees into the bargaining units adds approximately 29 employees to the unit of registered nurses and approximately 4 employees to the unit of non-professional employees.

5. DIABETES CENTER OF HEALTH MIDWEST

a) Facts

The formal name of this service, entity, or department is the Diabetes Center of Health Midwest. The parties did not submit any additional evidence at the February 2003 hearing regarding the Diabetes Center of Health Midwest.

A review of the evidence submitted at the initial hearing establishes that the Diabetes Center of Health Midwest has five locations: 1) an office at 2188 East Meyer Boulevard, Kansas City, Missouri, on the Research Hospital “campus” and referred to as the “main” office; 2) an office at 2400 R.D. Mize Road, Independence, Missouri, located on the “campus” of Health Midwest’s MCI hospital in Independence, Missouri; 3) an office at 12200 W. 106th Street, Overland Park, Kansas, located on the “campus” of Health Midwest’s Overland Park Regional Hospital in Overland Park, Kansas; 4) an office at Health Midwest’s Lafayette Regional Health Center in Lexington, Missouri; and 5) an office at Health Midwest’s Hedrick Medical Center in Chillicothe, Missouri.

The Employer contends that the employees of the three locations of the Diabetes Center of Health Midwest in the Kansas City metropolitan area (i.e. in Kansas City, Missouri, in Independence, Missouri, and in Overland Park, Kansas) must be included in the Research Hospital bargaining units. The Employer does not seek to include in the Research Hospital bargaining units the employees of the two Diabetes Center of Health Midwest office locations outside the Kansas City metropolitan area (i.e. the offices at Health Midwest acute care hospitals in Lexington, Missouri and Chillicothe, Missouri). The Employer referred to the offices in Lexington and Chillicothe, Missouri as “affiliate” locations of the Diabetes Center of Health Midwest.

All five locations of the Diabetes Center of Health Midwest are under the direction and oversight of Ann Kellet. Kellet directly supervises employees employed at the three offices in the Kansas City metropolitan area, but does not directly supervise employees in the two “affiliate” offices. Kellet reports directly to Health Midwest’s Senior Executive Officer, Kevin Hicks. Hicks is the SEO of Research Hospital. Hicks in turn reports to Steve Newton, the CEO of Research Hospital and the CEO of Health Midwest-Central Region. Under Kellet are three regional managers who correspond to each of Health Midwest’s three regions: 1) Central Region, Maureen Gilchrist; 2) Independence Region, Sarah Ryan; and 3) Johnson County Region, Chery Herder. The Diabetes Center of Health Midwest is operated through the Board of Directors of Research Hospital and by a separate advisory board.

The function of the Diabetes Center of Health Midwest is to offer outpatient education to individuals regarding the management of diabetes. At its various offices, The Diabetes Center of Health Midwest offers small group classes and individual outpatient counseling sessions regarding the management of diabetes. The services offered by the Diabetes Center of Health Midwest are provided by a “team” which consists of a nurse and a dietitian. In addition, at some of the five Diabetes Center of Health Midwest offices, employees provide educational services to patients at acute care hospitals on an as needed basis.

There are a total of approximately 36 employees, including 13 registered nurses, employed at the three Diabetes Center of Health Midwest offices in the Kansas City metropolitan area. Eleven of these 13 registered nurses are classified as nurse clinicians-diabetes and two are classified as diabetes-clinical research coordinators. The nurse clinicians assess an individual patient's educational needs, conduct education classes in conjunction with dietitians, document the education provided to the patient, and may adjust the patient's medication or insulin under the supervision of a physician. The two clinical research nurse coordinators conduct clinical research studies for pharmaceutical companies, recruit patients to participate in the studies, and work with the study sponsors regarding documentation on other aspects of clinical research.

Of the 13 Diabetes Center of Health Midwest employees the Employer seeks to include in the bargaining unit, 6 (4 nurse clinicians and 2 clinical research coordinators) are employed at the office located at 2188 East Meyer, Kansas City, Missouri on the "campus" of Research Hospital (Kansas City, Missouri, location). One of the nurse clinicians employed at the 2188 East Meyer office is assigned to visit patients in Research Hospital on an as needed basis to teach the patient the minimum skills necessary for the patient to care for their diabetes at home so that the patient can be released from the hospital. It is not clear how much time this employee actually spends working in Research Hospital, although one Employer witness asserted that this employee "primarily" worked with patients in Research Hospital and "probably" worked daily with patients in Research Hospital. No other employee at the 2188 East Meyer office regularly works in Research Hospital or with inpatients, although two nurse clinicians at the 2188 East Meyer office take over the "as needed" duties at Research Hospital when the nurse clinician who is regularly assigned this responsibility is on vacation. Once a week a team of one nurse clinician and a dietitian from the 2188 East Meyer office travel to outreach locations at: 1) Research-Belton Hospital; 2) Wyandotte Medical Clinic located on the campus of Providence Medical Center (a non-Health Midwest facility); 3) The Encompass Medical Group Northland, a private physician's office in Kansas City, Missouri, and 4) The Encompass Medical Group Stadium, in Kansas City, Missouri. The function of the outreach programs is to teach outpatient

diabetes management classes. There is no evidence that any inpatient or acute care services are offered in conjunction with the outreach programs. There is no evidence that any employee of the Diabetes Center of Health Midwest offices in Independence, Missouri and in Overland Park, Kansas ever works in Research Hospital or with patients of Research Hospital.

There are three nurse clinicians employed at the Diabetes Center of Health Midwest location at 2400 R.D. Mize Road, Independence, Missouri on the “campus” of MCI Hospital. Nurse clinicians at the Independence, Missouri office do not provide inpatient services at MCI Hospital or at any other acute care hospital. Several times a month, a team consisting of a nurse and a dietitian travel from the Independence office to an office on the “campus” of Health Midwest’s Lees’ Summit Hospital in Lees’ Summit, Missouri, to conduct outpatient diabetes management classes. The record does not reflect whether the registered nurses employed in the Independence office are included in the established bargaining unit of registered nurses employed at MCI Hospital. At the hearing the Employer’s Regional Director for Human Resources for Health Midwest-Central Region, Frankie Hagan, was asked whether the registered nurses employed at the Diabetes Center location in Independence, Missouri were currently included in the bargaining unit of registered nurses employed at MCI Hospital. Hagan responded that she did not know whether nurses employed at the Diabetes Center location in Independence, Missouri were included in the existing bargaining unit. No party produced further evidence on the issue. The Decision and Direction of Election directing the election at MCI Hospital does not reflect whether the MCI Hospital bargaining unit includes the registered nurses employed at the Diabetes Center location in Independence, Missouri.

There are four nurse clinicians employed at the Diabetes Center of Health Midwest office at 12200 W. 106th Street, Overland Park, Kansas, located on the “campus” of Health Midwest’s Overland Park Regional Hospital in Overland Park, Kansas. The nurse clinicians at this location appear to provide at least some services to patients in Overland Park Regional Hospital itself as well as to patients at Health Midwest’s Menorah Hospital in Overland Park, Kansas, but there is no record evidence regarding the frequency of

inpatient services provided by employees at the Overland Park office. The registered nurses employed at Menorah Hospital are represented by the Petitioner-Nurses. The registered nurses at Overland Park Regional hospital are not represented. The record does not reflect whether any employees of the Overland Park office are included in the established bargaining unit of registered nurses employed at Menorah Hospital.

The employees of the three locations of the Diabetes Center of Health Midwest within the Kansas City metropolitan area meet monthly. The monthly meetings are held either in a classroom at Research Hospital or at the Overland Park office of the Diabetes Center of Health Midwest. It is not clear whether employees from the offices in Lexington, Missouri or in Chillicothe, Missouri attend the monthly meetings. Services performed at the three offices in the Kansas City metropolitan area are billed through Research Hospital. Services performed at the two “affiliate” offices are billed through Health Midwest’s Lafayette Regional Health Center in Lexington, Missouri and Health Midwest’s Hedrick Medical Center in Chillicothe, Missouri.

Since May 2001, employees at the three locations of the Diabetes Center of Health Midwest in the Kansas City metropolitan area have been on the same payroll as the employees of Research Hospital. Prior to May 2001, employees at these three offices were assigned to the payroll of the acute care hospital on which campus the office was located. Although the employees of the three Kansas City metropolitan area offices of the Diabetes Center of Health Midwest are currently carried on the Research Hospital payroll, these costs are “allocated back to the host hospitals within the system”. There is no evidence regarding how the allocation is done. Employees of The Diabetes Center of Health Midwest offices in Lexington, Missouri and Chillicothe, Missouri are carried on the payrolls of the Health Midwest institutions where they work (i.e. Lafayette Regional Health Center and Hedrick Medical Center).

On August 31, 2001, Health Midwest management decided to move the “main” office of the Diabetes Center of Health Midwest from the Research Hospital Campus to Baptist Hospital, but later reversed the decision. The record does not appear to reflect how the

“main” office differs from the other Diabetes Center of Health Midwest offices. It does not appear that the “main” office has more or substantially more employees than the other offices and there is no record evidence that the management of this service is located exclusively, or even primarily, at the “main” office. The “main” office is housed in a building that was formerly used as student housing for the College of Nursing.

Non-professional employees employed at the three locations of the Diabetes Center of Health Midwest within the Kansas City metropolitan area include employees working in the following job classifications: clerk typist, receptionist, secretary II, secretary III, and lead secretary. There is no record evidence regarding the number of employees in these job classifications or the location to which they are assigned to work. The Diabetes Center of Health Midwest located on the Research Hospital campus is cleaned by environmental services and plant operation service employee employed at Research Hospital. There is no record evidence regarding how the other four offices of the Diabetes Center of Health Midwest are cleaned.

Three of the registered nurses currently employed by the Diabetes Center of Health Midwest transferred from the staff of Research Hospital, two transferred from Trinity Lutheran Hospital, and two transferred from Menorah Hospital. There does not appear to be any occurrences of temporary transfers or “shared staffing” between the Diabetes Center of Health Midwest and any other Health Midwest facility, including Research Hospital. Diabetes Center of Health Midwest employees are permanently assigned to one of the five Diabetes Center of Health Midwest locations. The record does not reflect whether there are permanent or temporary transfers of employees between any of the five offices of the Diabetes Center of Health Midwest.

b) Determination

I find that the various offices of The Diabetes Center of Health Midwest, including its office located at 2188 East Meyer Boulevard, Kansas City, Missouri, on the Research Hospital “campus”, are separate and distinct entities from the acute care hospital Research Hospital. Thus, I find that the Diabetes Center of Health Midwest is not

included in the definition of Research Hospital. I further find that the various offices of the Diabetes Center of Health Midwest are separate entities from Research Hospital.

In making this determination, I note the following factors. None of the various offices of The Diabetes Center of Health Midwest operates within Research Hospital's main building at 2316 East Meyer Boulevard or in any other area that is clearly encompassed by Research Hospital. The two offices of the Diabetes Center of Health Midwest, in Independence, Missouri and in Overland Park, Kansas, that the Employer seeks to include in the Research Hospital bargaining unit, are not only located away from Research Hospital, they are located on the campus of other Health Midwest acute care hospitals. The Employer does not seek to include the offices of the Diabetes Center of Health Midwest located in Chillicothe and Lexington, Missouri, in the bargaining unit.

The core service offered by the Diabetes Center of Health Midwest is not an acute care service and is not functionally integrated with services offered by any acute care hospital. The core purpose of the Diabetes Center of Health Midwest is to provide *outpatient education classes and programs* regarding the management of diabetes so that individuals can manage their diabetes and not require acute care services. This purpose is separate and distinct from the purpose of Research Hospital and is not in support of the purpose or operation of Research Hospital. The Diabetes Center of Health Midwest does not primarily exist for the purpose of providing support for the acute care patient services provided within any acute care hospital, including Research Hospital. The operations and functions of the Diabetes Center of Health Midwest and the Research Hospital are not integrated or dependent upon each other for operation or functioning, or for their purpose or reason to exist. There is no evidence that the Diabetes Center of Health Midwest provides a substantial amount of services to patients of Research Hospital or that a significant source of patient referrals to the various Diabetes Center of Health Midwest offices is from Research Hospital. Rather, the evidence is that the function of the Diabetes Center of Health Midwest is outpatient diabetes education, and that any services performed by the Diabetes Center of Health Midwest employees within Research Hospital appear to be minimal.

Only one of six registered nurses employed at the “main” office at 2188 East Meyer Boulevard regularly works in Research Hospital or with inpatients at Research Hospital and the record does not reflect how much of her time is actually spent in Research Hospital. None of the employees at the Independence, Missouri or the Overland Park, Kansas office of the Diabetes Center of Health Midwest works in Research Hospital. Nurses employed in the various offices of the Diabetes Center of Health Midwest do not temporarily transfer to Research Hospital and there is no record of voluntary “shared staffing” between nurses employed at the various offices and nurses employed at Research Hospital.

Seven of the 13 registered nurses the Employer seeks to include in the Research Hospital bargaining unit work in offices in Independence, Missouri and in Overland Park, Kansas and they never work in Research Hospital. These two Diabetes Center of Health Midwest offices are not only located miles away from the Research Hospital “campus”, but they are located on the “campus” of two other Health Midwest acute care hospitals. These two hospitals are not administered by the same Health Midwest Region that administers Research Hospital, but are administered respectively by Health Midwest Independence Region and Health Midwest Johnson County Region. Employees in the Diabetes Center of Health Midwest office in Independence perform no services for acute care patients even on an “as needed basis” and may or may not be already included in the existing bargaining unit of registered nurses employed at MCI Hospital.

The Diabetes Center of Health Midwest at its various locations operates as a cohesive unit. Registered nurses employed at the Diabetes Center of Health Midwest are not supervised by the same management structure, including a Director of Nursing, who supervises most of the registered nurses employed in Research Hospital. The various locations of the Diabetes Center of Health Midwest offices, its management structure, and even its formal name establish that the Diabetes Center of Health Midwest is a Health Midwest system-wide service rather than a service connected with Research Hospital or with any one particular acute care hospital within the Health Midwest system.

The Diabetes Center of Health Midwest, and its various offices, is a non-acute care service that is a separate entity from the acute care hospital known as Research Hospital.

The fact that the Diabetes Center of Health Midwest is currently considered a “hospital-provider” service linked with Research Hospital for purposes of Medicare reimbursement is not determinative of whether any of its various offices are actually the same entity or inherently part of Research Hospital for purposes of collective bargaining. See Staten Island University Hospital, 308 NLRB 58 (1992), at 59. I note that determinations regarding whether an entity is a “hospital-provider” service or a “free-standing” service for purposes of Medicare are fluid and change depending upon what designation maximizes reimbursement at the time. For example, until December 2000 the Visiting Nurses Association (VNA) was considered part of Research Hospital for Medicare reimbursement purposes. However, in 2001 the VNA became a “free-standing” health care provider which filed a Medicare reimbursement report that was separate from the report filed by Research Hospital. The shift of the VNA to “free-standing” status was not based on a change in the location or operation of the VNA but, rather, was based on a change in Medicare reimbursement rules which made it more financially advantageous for the VNA to file Medicare reports as a “free-standing” or non-hospital based health care provider.

Finally, the fact that the “main” office at 2188 East Meyer, Kansas City, Missouri, is located on the campus of the Research Hospital is insufficient to establish that office is part of Research Hospital, or that other offices of the Diabetes Center of Health Midwest must be included in the Research Hospital bargaining units. The fact that a health care service or entity is located on the same “campus”, i.e. in the same general geographic location as an acute care hospital, does not establish that the health care service and the acute care hospital are the same entity or that a “campus-wide” bargaining unit is appropriate. See Visiting Nurses Association of Central Illinois, 324 NLRB 55 (1997) (a visiting nurses association located on a medical center campus with an acute care hospital constituted a separate “single facility” bargaining unit distinct from the acute care hospital). See also The University of Pittsburgh Medical Center, 313 NLRB 1341, 1342

(1994) (two acute care hospitals located on a blended campus are recognized as separate entities). Moreover, the Diabetes Center of Health Midwest offices are not all located on the Research Hospital campus and, therefore, the facts here present an even weaker case for inclusion of the Diabetes Center of Health Midwest employees in the Research Hospital bargaining units based on a “campus” argument than was presented in Visiting Nurses Association of Central Illinois, 324 NLRB 55 (1997) where the Visiting Nurses Association was located in its entirety on a hospital campus. Determination of the bargaining units based on a “campus” argument would have the unwarranted effect of splitting the various offices of the Diabetes Center of Health Midwest among several acute care hospitals.

The fact that the employees at the Diabetes Center of Health Midwest offices in Independence, Missouri, and Overland Park, Kansas, are currently on the same payroll as the employees of Research Hospital or that their services are billed through Research Hospital is insufficient to establish that these three offices of the Diabetes Center of Health Midwest are part of Research Hospital itself. The record reflects that assignment of three of the five Diabetes Center of Health Midwest offices to Research Hospital’s payroll is an accounting or organizational convenience that is unrelated to the work performed by the employees of the Diabetes Center of Health Midwest offices and does not reflect any inherent relationship or connection between the Diabetes Center of Health Midwest offices and Research Hospital. The fact that the Diabetes Center of Health Midwest locations in the Kansas City metropolitan area are owned and operated by the same corporation as Research Hospital does not determine the scope of the Research Hospital bargaining unit.

With regard to concerns of unit proliferation, during the rulemaking process the Board determined that Congressional concern regarding unit proliferation was directed “towards the fifteen to twenty plus units that had arisen in the health care and other industries prior to the amendments and the possibility of scores of units if each hospital classification were permitted to organize separately”. See 284 NLRB at 1575 (1989). The Board addressed Congressional concerns regarding unit proliferation by establishing eight

appropriate bargaining units *within a single acute care hospital*. *The Rule considered concerns regarding unit proliferation and established that a single acute care hospital is a presumptively appropriate bargaining unit*. The fact that an employer owns other health care services or more than one acute care hospital does not afford the employer a basis to override the applicability of the Rule on the basis of concerns of unit proliferation. The issue is whether a health care service is part of a specific acute care hospital or whether it is a separate and distinct service from the acute care hospital. If the Diabetes Center of Health Midwest is a separate and distinct entity from the acute care hospital known as Research Hospital, concerns regarding unit proliferation do not constitute a basis to include employees of the Diabetes Center of Health Midwest within the Research Hospital bargaining units. In fact, inclusion of employees employed by entities separate from an acute care hospital frustrates Congressional intent to extend bargaining rights to health care employees by making the bargaining unit overbroad and unduly increasing the difficulty in organizing and bargaining on behalf of such employees. See 284 NLRB at 1542-1543.

Based on all of the above considerations, I find that the various locations of the Diabetes Center of Health Midwest, including its office located at 2188 East Meyer, Kansas City, Missouri, on the campus of Research Hospital, are separate and distinct entities from the acute care hospital known as Research Hospital. Accordingly, in order to be included within the Research Hospital bargaining units, it would have to be established that a multi-facility bargaining unit including employees of the Diabetes Center of Health Midwest with employees of Research Hospital is appropriate. The multi-facility analysis is discussed in the section following the determination of the definition or parameters of Research Hospital, where it is found that the various locations of the Diabetes Center of Health Midwest should be excluded from the appropriate units.

6. TRINITY FAMILY MEDICINE CENTER

a) Facts

The Trinity Family Medicine Center is located in a private medical office building at 2900 Baltimore, Kansas City, Missouri, adjacent to the former Trinity Lutheran Hospital, a Health Midwest acute care hospital that closed in 2001. The Trinity Family Medicine Center is located approximately seven miles from Research Hospital and seven miles from Baptist Hospital. Other Health Midwest operations that are located in the same building as the Trinity Family Medicine Center include the Infectious Disease Clinic (IDC). No party seeks to include the employees of IDC in the same bargaining unit as the employees of Research Hospital.

The Trinity Family Medicine Center is an outpatient medical clinic similar in operation to the Goppert Medical Clinic, located on the campus of Baptist Hospital. Both the Trinity Family Medicine Center and the Goppert Medical Clinic offer general family practice outpatient clinical services to the public. Both the Trinity Family Medicine Center and the Goppert Medical Clinic conduct a residency program for family practice physicians. The residency program at Trinity Family Medicine Center was formerly supervised by physicians employed at Trinity Lutheran Hospital. Upon closure of Trinity Lutheran Hospital in 2001, the supervision of the approximately 24 residents who were in the 3-year residency program was transferred to physicians employed in Research Hospital. The number of residents in the program has decreased by eight each year after 2001, and it appears that there are currently eight residents in the program. Research Hospital's involvement in the residency program will terminate in 2004. Thereafter, the residency program will be supervised in its entirety by Baptist Hospital and the employees of the Trinity Family Clinic will be transferred to the payroll of Baptist Hospital.

Employed at the Trinity Family Clinic are six to seven registered nurses, faculty physicians, family practice residents, LPNs, radiology technologists, a medical records clerk, and administrative support personnel. Non-professional employees employed at

Trinity Family Clinic are classified as secretary, family practice; bi-lingual patient service representative; specialist, referral; and technical assistant laboratory.

Stephen Edgar is responsible for overall management of the Trinity Family Clinic as well as the Research Family Practice Residency Program. Edgar reports to Senior Vice President of Medical Affairs-Central Region Dr. Max Jackson and to Kevin Hicks. Registered nurses at the Trinity Family Clinic are supervised by Irene Moore, an on-site supervisor.

There is no evidence that registered nurses employed at Trinity Family Clinic work at Research Hospital or go to Research Hospital for any work related purpose. Two of the registered nurses employed at Trinity Family Clinic formerly worked at Research Hospital. There is no evidence of any shared staffing or temporary transfers between Trinity Family Clinic and any Health Midwest facility for registered nurses, non-professional employees, or other classifications of employees.

On August 23, 2002, the U. S. Department of Health and Human Services approved the Employer's request to recognize Trinity Family Medicine Center as a hospital provider-based outpatient clinic for purposes of Medicare reimbursement. Approval was "contingent upon the hospital maintaining its control and direction over the daily operations and quality assurance of Family Medicine Center. Both the hospital and the clinic must continue to comply with provider-based regulations found in 42 CFR Sec. 413.65". Family Medicine Center must also be reported in the appropriate section(s) of Research Medical Center's Medicare cost report."

b) Determination

I find that the Trinity Family Medicine Center is not part of the acute care hospital known as Research Hospital. The Trinity Family Medicine Center is located in a separate facility seven miles away from Research Hospital and provides outpatient services that are not linked or functionally integrated with the services provided in Research Hospital.

The employees of the Trinity Family Medicine Center do not perform their job functions or work in Research Hospital and there is no interchange of employees between the two facilities. Trinity Family Medicine Center and Research Hospital each has separate on-site management.

The fact that the Employer currently is organized so that physicians from Research Hospital provide oversight of medical residents at Trinity Family Medicine Center does not establish that Trinity Family Medicine Center is the same entity or part of the acute care hospital known as Research Hospital. Further, the Employer's assertion that until 2004 Trinity Family Medicine Center does not have a "separate legal existence", i.e. is part of the same corporation that operates Research Hospital, does not establish that Trinity Family Medicine Center and Research Hospital are one facility, are the same entity, or that the employees of Trinity Family Medicine Center are appropriately included in the same bargaining unit as the employees of the acute care hospital known as Research Hospital. The fact that the Trinity Family Medicine Center was formerly part of Health Midwest's Trinity Lutheran Hospital, was recently transferred to Research Hospital, and will be transferred again to Baptist Hospital in 2004, illustrates the flexibility that Health Midwest has in organizing its services as well as the fluidity and impermanence of some of its organizational assignments to specific corporations. Common ownership or assignment to the same corporate entity or holding company is not determinative of the scope of the bargaining unit. See Staten Island University Hospital, 308 NLRB 58 (1992); O'Brien Memorial, Inc., 308 NLRB 553 (1992)

Finally, the fact that Medicare rules permit Trinity Family Medicine Center and Research Hospital to file a common report for service reimbursement purposes does not establish that the Trinity Family Medicine Center is part of the acute care hospital known as Research Hospital. The labeling of non-acute care services as "hospital-provider based" or "stand alone services" for purposes of Medicare reimbursement is fluid and changes with Medicare reimbursement rules to reflect whatever arrangement is most financially beneficial to Health Midwest. See Staten Island University Hospital, 308 NLRB 58 (1992).

For the above reasons, I find that Trinity Family Medicine Center is not part of the acute care hospital known as Research Hospital. Accordingly, in order to include the Trinity Family Medicine Center employees in the same bargaining unit as the employees of Research Hospital, it would have to be established that a multi-facility bargaining unit including employees of the acute care hospital with the employees of the non-acute care medicine center is appropriate. I reject such a proposition in the multi-facility analysis discussed in the section following the determination of the definition of Research Hospital.

7. RESEARCH-BELTON HOSPITAL

a) Facts

Research-Belton Hospital was created in 1984 when approximately 75 beds at Research Hospital were “decommissioned” from Research Hospital and allocated to a new acute care hospital called Research-Belton Hospital. Research-Belton Hospital is located at 17065 S. 71 Highway, Belton, Missouri, approximately 15 miles south of Research Hospital. Geographically, Research-Belton Hospital is located substantially closer to Lees’ Summit hospital (grouped in Health Midwest Independent Region) and to Menorah Hospital (grouped in Health Midwest Johnson County Region) than it is to Research Hospital.

Research-Belton Hospital is owned and operated by the same corporation that operates Research Hospital and is managed by the same Board of Directors as Research Hospital. Research-Belton Hospital and Research Hospital operate under the same Medicare provider number and are considered a single entity by the Joint Commission on Accreditation of Health Care Organizations. Effective February 1, 2002, many business office functions of Research-Belton Hospital were consolidated at Research Hospital. The volunteer and auxiliary functions of Research-Belton Hospital and Research Hospital are consolidated.

Research-Belton Hospital is managed by Dan Sheehan who reports to SEO Kevin Hicks. Research-Belton Hospital Nursing Director Diane Martin is responsible for the nursing functions at Research-Belton Hospital. Under Martin are four nursing unit or department managers: 1) Carol Creek (Emergency Room); 2) Mari Ann Winslow (skilled nursing and outpatient area); 3) Fran Floria (acute care medical-surgical unit); and 4) Karen Lomas (surgery). The above named supervisors do not exercise any work responsibilities at Research Hospital. Sheehan holds bi-weekly management meetings at Research-Belton Hospital which are attended by the Research-Belton Hospital supervisors but not by the supervisors of any other facility including Research Hospital. Research-Belton Hospital and Research Hospital share directors of occupational physical therapy, pulmonary, pastoral care, and environmental and food services.

Research Hospital and Research-Belton Hospital have separate medical staffs. The employee complements at Research Hospital and Research-Belton Hospital are also separate. There is no special arrangement between Research Hospital and Research-Belton Hospital to share or transfer staff in the event that a nursing unit or department at one of the hospitals is short staffed. Each facility has its own regular employee complement and employees from one facility cannot be required to work at the other facility. As is the case between all Health Midwest acute care hospitals, there are voluntary temporary transfers between facilities when an employee chooses to pick up extra hours by working a shift or partial shift at another facility. Such voluntary temporary transfers between Research Hospital and Research-Belton Hospital generate a “shared staffing report”. At the initial hearing, the Employer’s witnesses asserted that there were fewer instances of shared staffing or temporary voluntary transfers of staff between Research Hospital and Research-Belton Hospital than between some other Health Midwest hospitals because both Research Hospital and Research-Belton Hospital were busy and staff could easily work extra hours at their own hospital rather than seeking extra work hours at another hospital facility. There are no permanent charge nurses employed at Research-Belton Hospital, although there are permanent charge nurses employed at Research Hospital.

There is a clear and long-standing separate bargaining history between Research Hospital and Research-Belton Hospital with regard to the skilled maintenance employees. Thus, the skilled maintenance employees of Research-Belton Hospital have never been included in the established bargaining unit of skilled maintenance employees employed at Research Hospital.

From January 1, 2001 through March 31, 2002, six registered nurses permanently transferred from Research Hospital to Research-Belton Hospital. One registered nurse transferred from Research-Belton Hospital to Research Hospital.

There are some shared services between Research Hospital and Research-Belton Hospital. The cardiac rehab program at Research-Belton Hospital is an outreach program where Research Hospital employees come to Research -Belton Hospital to perform services. Employees from the Communicative Disorders Clinic at Research Hospital go to Research-Belton Hospital once or twice a week to perform services. In addition, a skin care specialist at Research Hospital goes to Research-Belton Hospital to provide direct patient care on an as-needed basis. Nurse educators from the Health Midwest Patient Services-Education Department who are nominally stationed at Research Hospital go to Research-Belton Hospital to conduct continuing education for Research-Belton Hospital's staff. Research Hospital and Research-Belton Hospital share a dietitian who is employed by a third party and not by either hospital.

b) Decision

In Children's Hospital of San Francisco, 312 NLRB 920 (1993), the Board found that two acute care hospital facilities located a mile apart were two separate acute care hospital facilities and a bargaining unit limited to the registered nurses employed at one of the two "campuses" constituted a separate appropriate bargaining unit. The two hospitals held themselves out to the public as a single entity with two campus locations, shared a centralized nursing department, had management officials with responsibilities on both campuses, shared a common float pool of nurses, shared some equipment, and maintained reciprocal admitting privileges for physicians. Although the two hospitals had

a long-standing separate bargaining history, the Board held that it would find the two hospitals separate bargaining units *without reliance on their separate bargaining history*. The Board cited the following factors as being significant in its determination that the two hospitals were separate entities: 1) lack of significant interchange between nurses on the two hospital campuses, 2) the lack of functional integration between what are essentially two full service acute care medical facilities, and 3) the absence of record evidence of any potential for undue adverse consequences resulting from a labor dispute in a bargaining unit limited to one of the two acute care hospital. The Board also noted consideration of significant factors cited by the ALJ, which included: geographical proximity of the facilities, employee transfers, common supervision, and administrative centralization.

The facts supporting a finding that Research Hospital and Research-Belton Hospital are separate acute care hospitals and separate appropriate bargaining units are stronger than the facts in Children's Hospital of San Francisco. I find, in accordance with the Board's decision in Children's Hospital of San Francisco, that Research Hospital and Research-Belton Hospital are separate entities and separate appropriate bargaining units. In making this finding, I note that the two acute care hospitals are located 15 miles apart; essentially function as stand-alone acute care facilities; have separate employee complements and separate management that controls day-to-day labor relations at each hospital; there is a lack of significant interchange of employees between the two facilities, and there is a clear bargaining history of almost 20 years that treats Research Hospital and Research-Belton Hospital as two separate and distinct acute care hospitals.

I further find that the fact that Research Hospital and Research-Belton Hospital file a joint report for purposes of Medicare reimbursement, that the two hospitals share a single accreditation procedure, and the fact that the two hospitals are considered operated by the same subsidiary corporation of Health Midwest insufficient to establish that the two hospitals are one single acute care hospital, a single entity, or that the two acute care hospitals must be combined into a single bargaining unit. Rather, these facts are indicative of common ownership, but common ownership of facilities alone does not

establish that separate facilities or separate acute care hospitals must be combined into a single bargaining unit. See Mercy Hospitals of Sacramento, Inc., 217 NLRB 765, 771 (1975) (a finding of single employer status does not mean that a unit limited to a single facility is inappropriate); Visiting Nurses Association of Central Illinois, 324 NLRB 55 (1997) (“Even if the Employer and MMC are a single employer, we find, in agreement with the Regional Director, that the petitioned-for single-facility healthcare unit is presumptively appropriate...”); Staten Island University Hospital, 308 NLRB 58 (1992) (two acute care hospitals operated by a single corporation, share a single budget and audit, have a single reimbursement provider number covering all sites, and the two locations are accredited as a single hospital by the Joint Commission on Accreditation of Hospitals (JCAH) are each recognized as a separate “single-facility” by the Board).

IX. MULTI-FACILITY BARGAINING UNIT ANALYSIS

A. APPLICABLE RULES

Inasmuch as the parameters of Research Hospital have now been defined, it remains to determine whether a multi-facility bargaining unit consisting of Research Hospital and any other facility is appropriate for collective bargaining. In making this determination, the following rules are operative: 1) the Rule establishes a presumption that a bargaining unit limited to a single acute care hospital is appropriate; 2) the Employer has the burden of rebutting the single acute care hospital presumption established by the Rule; 3) in order to combine the employees of Research Hospital in the same bargaining unit as employees of another acute care hospital(s) the test is whether the single acute care hospital presumption is rebutted under the “multi-facility” test; 4) in order to combine the employees of Research Hospital in the same bargaining unit as employees of a non-acute care entity or entities the applicable test is “extraordinary circumstances” within the meaning of the Rule, not the “multi-facility” test; and 5) the “extraordinary circumstances” test established by the Rule is more stringent than the “multi-facility” test.

B. OTHER ACUTE CARE HOSPITALS

The Employer seeks to include Research Hospital in a multi-facility bargaining unit with two other acute care hospitals, Research-Belton (located 15 miles from Research Hospital) and Baptist Hospital (located 1 mile away from Research Hospital).

Under the Rule, the inclusion of multiple acute care hospitals into a single bargaining unit does not open the scope of the appropriate bargaining units to adjudication. See 284 NLRB 1596, at 1597 Section 103.30(b). Accordingly, even if Research Hospital is combined with other acute care hospitals into a single bargaining unit, the appropriateness of bargaining units limited to registered nurses or to non-professional employees is established by the Rule and may not be litigated by the Parties.

The factors that the Board considers in determining whether a bargaining unit consisting of multiple acute care hospitals is appropriate is set forth in Children's Hospital of San Francisco, 312 NLRB 920 (1993), discussed *infra*. I have determined that the evidence is insufficient to establish that a multi-facility bargaining unit consisting of Research Hospital, Research-Belton Hospital, and Baptist Hospital is appropriate. Each of these three acute care hospitals is essentially a separate stand-alone acute care hospital and lacks substantial functional integration with the other hospitals; the hospitals are geographically separated; each hospital has a separate employee complement and the record does not reflect substantial evidence of regular contact and interchange of employees between the hospitals; each hospital has separate on-site management personnel who determine day-to-day labor relations issues such as hiring decisions, discipline, and job evaluation; the limited employee interchange that does occur is voluntary and is not of a different character or amount than the interchange of employees between Health Midwest's various other acute care facilities; there is a long-standing separate bargaining history at Research Hospital that separates it from both Research-Belton-Hospital and from Baptist Hospital; and the record does not reflect substantial evidence of any potential for undue adverse consequences on the separate facilities resulting from a labor dispute at the other facilities. See Children's Hospital of San

Francisco, 312 NLRB 920 (1993)(two acute care hospitals are separate bargaining units); University of Pittsburgh Medical Center, 313 NLRB 1341 (1994)(two acute care hospitals are separate bargaining units); Passavant Retirement and Health Center, Inc., 313 NLRB 1216 (1994) (multiple non-acute care entities on single campus are separate bargaining units).

I further find that the fact that Research Hospital and Research Belton Hospital file a joint report for purposes of Medicare reimbursement and that the two hospitals share a single accreditation procedure does not override the factors set forth above including geographical separation, separate employee complements, little employee contact and interchange between the two hospitals, separate day-to-day supervision and control of labor relations, and a separate bargaining history spanning almost 20 years. See Staten Island University Hospital, 308 NLRB 58, 59 (1992) (two acute care hospitals operated by a single corporation, share a single budget and audit, have a single reimbursement provider number covering all sites, and the two locations are accredited as a single hospital by JCAH and Board recognizes each acute care hospital as a separate “single-facility” and finds separate bargaining units appropriate).

Thus, I find that the evidence produced by the Employer is insufficient to establish that the employees of Research Hospital are appropriately combined in a single bargaining unit with the employees of either of the two acute care hospitals operated within Health Midwest Central Region.

C. OTHER NON-ACUTE CARE FACILITIES

The Employer seeks to include with Research Hospital the following non-acute care services or facilities: 1) the Psych Center; 2) Trinity Family Medicine Center; and 3) the Diabetes Center of Health Midwest offices at 2188 East Meyer Boulevard, Kansas City, Missouri, 2400 R.D. Mize Road, Independence, Missouri, and 12200 West 106th Street, Overland Park, Kansas.

1. Applicable Test is “Extraordinary Circumstances”

In considering whether Research Hospital should be combined with the employees of any *separate* non-acute care entity it must be recalled that: 1) the Rule expressly provides that an acute care hospital and a separate non-acute care entity will not be combined into a single bargaining unit except in “extraordinary circumstances”. See Section 103.30(a); and 2) the combination of an acute care hospital and a separate non-acute care entity into a single bargaining unit *nullifies the application of the unit determinations made by the Rule and opens the unit scope issue to adjudication as if the entire unit was non-acute care*.

If Research Hospital is combined with any *separate* non-acute care facility or entity, the issue of whether bargaining units limited to registered nurses or to non-professional employees is subject to adjudication. In contrast, non-acute care services rendered *by the acute care hospital itself* do not take the hospital outside the definition of “acute care hospital” or outside the application of the Rule’s determination of the appropriate scope of the bargaining units. See Section 103.30 (2). Thus, a determination that a non-acute care service is part of a multi-facility bargaining unit that includes an acute care hospital has a far *different effect* than a determination that the non-acute care service is part of the acute care hospital itself.

With regard to the “extraordinary circumstances” showing necessary to combine an acute care hospital with a separate non-acute care entity, the Board indicated that such an exception is to be construed narrowly. Considerations such as the size of the institution, the variety of the services, different staffing patterns, and the degree of work contacts between groups of employees, do not fall within the exception. The party seeking to demonstrate extraordinary circumstances has the “heavy burden” of showing that its arguments are substantially different from those considered by the Board during the rulemaking procedures. 284 NLRB 1573-1574.

2. Application to The Psych Center

At Section 103.30 (2) of the Rule, the Board specifically excluded from the definition of “acute care hospital”, inter alia, facilities that are “primarily psychiatric hospitals” because the Board determined that employees in facilities that are “primarily psychiatric hospitals” have a distinct community of interest from employees in acute care hospitals.

As a basis to support its position that the employees of the Psych Center must be combined with the employees of Research Hospital, the Employer asserts that they are located on the same “campus”. This argument is not only insufficient to establish the required “extraordinary circumstances” required to combine an acute care hospital with a non-acute care entity, it is insufficient under the lesser evidentiary standard demanded by the “multi-facility” test to combine two acute care hospitals or to combine two non-acute care facilities located on the same campus See Visiting Nurses Association of Central Illinois, 324 NLRB 55 (1997) (Visiting Nurses Association on a the same campus as an acute care hospital is separate from the hospital); The University of Pittsburgh Medical Center, 313 NLRB 1341 (1994) (two acute care hospitals on a blended campus are separate units); and Passavant Retirement and Health Center, Inc., 313 NLRB 1216 (1994) (multiple non-acute care facilities on common 42 acre campus including 2 entities that offer assisted living services are separate bargaining units).

I find that the Employer has failed to meet its burden of establishing “extraordinary circumstances” required to combine the employees of Research Hospital and the Psych Center into a single bargaining unit.

3. Application to Trinity Family Medicine Center/ Various Diabetes Center Locations

The Rule expressly excludes facilities that are “primarily nursing homes, primarily psychiatric hospitals, or primarily rehabilitation hospitals” but does not expressly exclude facilities that are “primarily outpatient medical clinics” or “primarily outpatient diabetes education services”. The failure to specifically exclude *outpatient* services from the

definition of “acute care hospital” is *because it is readily apparent that outpatient services are not acute care and therefore they do not need to be expressly excluded from the definition of an acute care hospital.* The failure of the Board to expressly exclude outpatient services from the definition of “acute care” does not indicate that the Board believes that it is more likely or more desirable to include such services in the same bargaining unit as an acute care hospital.

The “extraordinary circumstances” standard is applicable to all non-acute care entities that are separate from an acute care hospital, whether those services are inpatient services that are expressly defined by the Rule to be “non-acute care” or to outpatient services that are inherently non-acute care.

I find that the Employer has failed to produce evidence to establish the “extraordinary circumstances” required to include employees employed at the Trinity Family Medical Center or employees employed at the various locations of the Diabetes Center of Health Midwest in the same bargaining unit as employees employed at Research Hospital.

With regard to the Diabetes Center of Health Midwest office located at 2188 East Meyer Boulevard, Kansas City, Missouri, on the Research Hospital “campus”, I find that the mere fact that this office is located on the “campus” does not constitute an “extraordinary circumstance”. Further, the fact that the Diabetes Center of Health Midwest and Trinity Family Medicine Center are, at least currently, operated by the same corporate entity as Research Hospital does not establish “extraordinary circumstances”. The “unit proliferation” argument is insufficient to establish the “extraordinary circumstances” required to combine separate non-acute care health services in the same bargaining unit as the employees of an acute care hospital.

4. Traditional Multi-Facility Test

The traditional multi-facility test is not the appropriate test to determine whether to combine an acute care hospital in the same bargaining unit as separate non-acute care entities. However, I find that under the multi-facility test, which is less stringent than the

“extraordinary circumstances” test, the evidence is insufficient to establish that employees of the Psych Center, the Trinity Family Medicine Center, or any of the various locations of the Diabetes Center should be included in the Research Hospital bargaining unit.

In this regard, I find that the health care services offered by each of the three above-named services are: 1) not substantially integrated with the acute patient care services offered by Research Hospital and lack functional integration with Research Hospital; 2) the employees in these three services have distinct skills and work functions from each other and from the employees employed in Research Hospital; 3) there is little, if any, interchange of employees between these three services and Research Hospital and, therefore, little contact between employees employed at these various entities; 4) each of these three services has separate and distinct management, supervision, and day-to-day control of labor relations from these functions at Research Hospital; 5) each of these three services is located in a geographically separate location from Research Hospital; and 6) Research Hospital has an established separate bargaining history and throughout the Health Midwest system there is no history of multi-facility bargaining. I find that these factors outweigh the consideration that there is administrative centralization of these entities through the management and common policies provided by Health Midwest’s Central Region management structure. Administrative centralization is insufficient to establish a multi-facility bargaining unit where there is little functional integration of the facilities, a lack of regular interchange of employees between the facilities, separate skills, duties, and working conditions, and a lack of common immediate supervision of employees. See First Security Services Corp., 329 NLRB 235 (1999), (centralized control of operations and labor relations is insufficient to rebut single-facility presumption where there is no significant interchange of employees and separate on-site management); Brien Memorial Inc., 308 NLRB 553 (1992), at 554; Staten Island University Hospital, 308 NLRB 58 (1992) at 61, and fn. 11; and Passavant Retirement and Health Center, 313 NLRB 1216 (1994).

With regard to the Diabetes Center of Health Midwest, I find that the circumstance that one of its five locations is on the Research Hospital campus, and the additional circumstance that the Employer currently chooses to place employees employed at the three Diabetes Center of Health Midwest offices located in the Kansas City metropolitan area on the Research Hospital payroll, is insufficient to establish that any of the Diabetes Center of Health Midwest locations should be included in the same bargaining unit as employees of Research Hospital. The fact that the “main” office of the Diabetes Center of Health Midwest is located on the Research Hospital “campus” does not, standing alone, either establish that the “campus” office is a “single-facility” with Research Hospital or that it is appropriate to include that office in the same bargaining unit as the employees of Research Hospital. See Visiting Nurses Association of Central Illinois, 324 NLRB 55 (1997)(an entity offering visiting nurses services located in its entirety on an acute care hospital campus was considered a separate “single facility” from the acute care hospital and constituted a separate bargaining unit from the employees in the acute care hospital)

Moreover, only one office of the Diabetes Center of Health Midwest is located on the Research Hospital “campus”, and the other four offices of the Diabetes Center of Health Midwest are located miles away from the campus. With regard to the office of the Diabetes Center of Health Midwest located on the campus of MCI Hospital, which the Employer now seeks to include in the bargaining unit of registered nurses employed at Research Hospital, there is a possibility that those employees are already included in the established bargaining unit of registered nurses employed at MCI Hospital. Moreover, in the event that the employees at the MCI office of the Diabetes Center of Health Midwest are not included in the established MCI bargaining unit, it would appear that the established bargaining history is to treat the Diabetes Center as a cohesive entity and not to split the entity between various acute care hospitals. Finally, the placement of some Diabetes Center employees on the Research Hospital payroll is an accounting convenience rather than an indication of the employees’ actual situs of employment.

D. CONCLUSION

The evidence is insufficient to establish that a multi-facility bargaining unit is appropriate, and I find that a bargaining unit limited in scope to employees employed at the acute care hospital known as Research Hospital is the appropriate bargaining unit. In accord with the Employer, and contrary to the position of the Petitioners, I find that the single acute care hospital known as Research Hospital includes the Transplant Institute, the Communicative Disorders Clinic, the Child Development Center, and the Nursing College. I reject the Employer's definition of Research Hospital to include Research-Belton Hospital, Trinity Lutheran Family Clinic, or three of the five offices of the Diabetes Center of Health Midwest.

I reject the Employer's argument that a "Central Region" bargaining unit including employees of Research Hospital, Research-Belton Hospital, Baptist Hospital, Trinity Lutheran Family Clinic, the Psych Center, and various locations of the Diabetes Center is an appropriate bargaining unit. I also reject the Employer's alternative argument that the Health Midwest operations on the "Research Hospital Campus" constitute a "single-facility" or that the "Research Hospital Campus" constitutes an appropriate bargaining unit.

E. OTHER SCOPE/COMPOSITION ISSUES

1. RURAL PHYSICIANS NETWORK

a) Facts

The Rural Physicians Network is the name of a department or function performed within Research Hospital's main building located at 2316 East Meyer Boulevard. The function of this department is to monitor the status of patients referred by physicians located outside the Kansas City metropolitan area to Health Midwest facilities and to communicate with the referring physicians regarding the status of the patient. Most, but not all, of the patients monitored by the nurses employed in this department are inpatients

at Research Hospital. Medicare reimbursement rules do not permit the Research Hospital to be reimbursed by Medicare for the services of the Rural Physicians Network.

The Director of the Rural Physicians Network is Dr. David Murphy. Dr. Murphy maintains an office on the fifth floor of Research Hospital and at his home in Holt, Missouri, approximately 50 miles from Research Hospital. Five employees currently fill the 2 1/2 job positions in the Rural Physicians Network department. One of the two full-time job positions is filled by Dr. Murphy's administrative assistant, Orvella Joyce Murphy (who is unrelated to Dr. Murphy). Ms. Murphy works at both Dr. Murphy's home office in Holt, Missouri and at her own home and does not come to Research Hospital to perform work.

In addition to Ms. Murphy, four registered nurses, classified as "nurse liaison" employees, are employed in the Rural Physicians Network. One registered nurse works full-time as a nurse liaison. The other three registered nurses share the single half-time position in the department on a rotating basis. At least two of the three employees who share the single half-time position in this department also work a regular PRN schedule in other areas of Research Hospital. All of the work of the registered nurses in the Rural Physicians Network department is performed within Research Hospital's building at 2316 East Meyer Boulevard.

In monitoring the referrals, the registered nurses screen computer information regarding inpatients at Research Hospital, go to patient care floors within Research Hospital to talk with the patient, review the patient's chart, and talk with patient care staff including nurses and physicians regarding the patient's treatment and status. The registered nurses then prepare a report summarizing the patient's treatment and status, and the report is sent to the referring non-staff rural physician who referred the patient.

b) Determination

Placement of employees employed in the Rural Physicians Network involves unit composition, not unit scope issues, as the Rural Physicians Network department does not

have a location separate or apart from Research Hospital's main building at 2316 East Meyer Boulevard. The fact that an employee or director is permitted to work at home, or that the employee is permitted to work in an office located in the home of the department's director rather than in Research Hospital itself does not establish a second "facility" or establish multi-facility bargaining scope issues. See Visiting Nurses Association of Central Illinois, 324 NLRB 55 (1997) (the fact that visiting nurse employees perform their work at patients' homes does not create multiple facilities).

The Petitioners object to the inclusion of employees in the Rural Physicians Network in the petitioned-for bargaining units, apparently on the basis that the job function is more accurately characterized as an administrative job positions than a registered nurse job position. Composition issues involve a determination as to into which of the eight permitted bargaining units in an acute care hospital a job position is correctly grouped or classified.

In my October 1, 2002 Decisions I found that: 1) the registered nurses employed in the Rural Physicians Network were included in the composition of the bargaining unit of registered nurses employed at Research Hospital and 2) the job position of administrative assistant held by Ms. Murphy was not a non-professional job position and was excluded from the composition of the bargaining unit of non-professional employees employed at Research Hospital. No new evidence was produced regarding the Rural Physicians Network at the February 2003 hearing and I reaffirm my earlier decisions regarding these employees.

2. PATIENT SERVICES-EDUCATION DEPARTMENT EMPLOYEES

a) Facts

There are a total of 19 employees, all of whom are registered nurses, employed in the Patient Services-Education Department. Of the 19 departmental employees, 17 are classified as nurse educators and 2 are classified as clinical informatic (computer) educators. Occasionally, an occupational therapist will also assume educator functions in

the department, but the record does not reflect the origin of the occupational therapist or entity from which the occupational therapist is assigned to the department.

Of the total of 19 department nurses, only 6 are even nominally based at Research Hospital. For five of the six employees nominally based at Research Hospital, the designation of Research Hospital as their “home base” is not reflective of where they actually work or reflective of a special connection with Research Hospital, but is essentially an accounting or payroll convenience. The sixth nurse educator “based” at Research Hospital conducts the operating room technician course offered at Research Hospital and Research Hospital is reflective of her usual work situs.

The other 13 department nurses are “nominally” based at other acute care hospitals in the Kansas City metropolitan area, but their “home base” designation is also not reflective of their work location or their affiliation with any particular Health Midwest acute care hospital. These 13 department nurses are “based” at the following acute care hospitals: 3 nurse educators and one clinical informatic educator based at Overland Park Regional Hospital; 3 nurse educators based at Independence Regional Hospital; 2 nurse educators based at Baptist Hospital; 1 nurse educator based at Lee’s Summit Hospital; 1 nurse educator and 1 clinical informatic educator based at Menorah Hospital (a second nurse educator position is vacant); and 1 nurse educator who reports to both MCI Hospital and to Independence Regional Hospital. There are established bargaining units of registered nurses employed at several of the acute care hospitals where department nurses are nominally “based”, but the record does not reflect whether department employees are included in the established bargaining units.

The Patient Services-Education Department employees work in classrooms and training labs across the Health Midwest system including classrooms located in Research Hospital, other acute care hospitals and in other classrooms throughout the Health Midwest system, and training labs located at 87th and Valentine in Johnson County, at Menorah Hospital, and at the Trinity North building on the site of the former Health Midwest Trinity Lutheran acute care hospital. The clinical informatic educators train

employees to use computer application programs and systems and maintain the computer systems at all 12 Health Midwest acute care hospitals.

The Director of the Patient Services-Education Department is Colleen Mall. Mall is considered to be employed by Health Midwest and is carried on the same payroll as the employees of Research Hospital. Mall oversees the clinical training programs at the 10 Health Midwest acute care hospitals in the Kansas City metropolitan area as well as the two Health Midwest acute care facilities located in Lexington and Chillicothe, Missouri. Mall's salary is allocated between the 12 acute care hospitals in the Health Midwest System. Mall reports to three regional Health Midwest acute care vice presidents for patient services: Central Region, Dana Dye; Independence Region, Michelle Smith; and Johnson County Region, Sarah Fields. Mall divides her time between the Health Midwest acute care hospitals in the Kansas City metropolitan area. Mall maintains offices at Research Hospital, Baptist Hospital, Menorah Hospital, Overland Park Hospital, and MCI Hospital. The employees of the Patient Services-Education department are not supervised by any of the managers or supervisors at Research Hospital or by the managers or supervisors of any other acute care hospital.

Until 2001, department employees were carried on the payroll of the acute care facility to which they were nominally assigned. Director of the Patient Services-Education Department Colleen Mall testified that department employees are now carried on a single payroll because employees in the department could be "in any facility at any time" and it is difficult to actually allocate each employee's time to a specific acute care hospital. Accordingly, Health Midwest made the decision to carry all employees in this department on the same payroll as employees of Research Hospital and to allocate the cost of the services provided by the department between its various Health Midwest acute care hospitals on a formula percentage basis. The record does not reflect how the allocation is done.

b) Determination

Generally, registered nurses employed by an acute care hospital as nurse educators or patient care clinical educators are included in the bargaining unit of registered nurses employed at the acute care hospital where they are employed. The difficulty here is the fact that Health Midwest has centralized the Patient Services-Education Department across its system, removed department employees from the control of the management of any acute care hospital, and structured the department so that departmental employees serve all Health Midwest acute care hospitals in the Kansas City metropolitan area rather than maintain an affiliation or connection with a single or a particular acute care hospital.

Thus, designation of a department employee as being based at a particular acute care hospital is not reflective of where the employee actually works and does not appear to indicate that the department employee is any more closely connected to the designated acute care hospital than to the other nine Health Midwest acute care hospitals in the Kansas City Metropolitan area.

Resolution of the status of this department appears to hinge on whether the Patient Services-Education Department is appropriately defined to be a department of Research Hospital or whether the department is a Health Midwest system-wide department that is not confined to a single acute care hospital within the Health Midwest system. If the department is not part of Research Hospital, inclusion of the department in the same bargaining unit as Research Hospital is contrary to the presumption established by the Rule, which limits the appropriate bargaining unit to the scope of the acute care hospital itself. In the formulation of the Rule the Board weighed the twin concerns of Congress: that effective bargaining rights be afforded to health care employees and that there not be a proliferation of bargaining units within a single acute care hospital. The Board interpreted Congress' concerns of extending bargaining rights to health care employees to dictate that the appropriate bargaining unit in an acute care hospital not be overbroad so that organization and effective bargaining on behalf of employees of acute care hospitals be prejudiced. The Board also determined that Congress' concern with unit proliferation

was the proliferation of bargaining units within the acute care hospital. Thus, the Board determined that a bargaining unit limited in scope to a specific acute care hospital was consistent with and balanced Congress' twin concerns: that effective bargaining rights be afforded to employees in the health care field and that bargaining units within a single acute care hospital do not proliferate. Accordingly, if the Patient Services-Education Department is not properly considered a department of or part of Research Hospital itself, it is unavailing to argue that the Patient Services-Education Department employees must be included in the same bargaining unit as employees of Research Hospital in order to prevent "unit proliferation".

Based on the record evidence I find that the Patient Services-Education Department is a Health Midwest department, not a department of Research Hospital itself. In making this determination, I note that the Director of the Patient Services-Education Department, Colleen Mall, reports to management in the Health Midwest Central Region rather than to management of Research Hospital. Thus, Mall does not report to the Senior Executive Officer of Research Hospital, Kevin Hicks but, rather, reports to Health Midwest Central Region Vice President of Patient Services Dana Dye. Further, registered nurses in the Patient Services-Education Department are not under the supervision of any of the four Directors of Nursing at Research Hospital or under the direction or supervision of any manager or supervisor of Research Hospital. The work of the department employees is not restricted to Research Hospital or uniquely linked with Research Hospital. There is no interchange of employees between the Patient Education-Services Department and Research Hospital. There is no evidence that department employees nominally based at Menorah Hospital, Lee's Summit Hospital, or MCI Hospital are included in the established bargaining units of registered nurses employed at those facilities. Therefore, the bargaining history appears to recognize that Patient Services-Education Department employees are not part of the acute care hospital where they are nominally based.

It is not appropriate to include all 19 employees in the Patient Services-Education Department within the Research Hospital bargaining unit, as urged by the Employer. Further, it is not appropriate to split the department into sub-groups based on the acute

care hospital to which the employees are nominally assigned because the “home base” assignment does not reflect where the department actually works, there does not appear to be any unique link between the department employee and the acute care hospital at which they are nominally based, because the interests of department employees are aligned with other department employees rather than with the employees of the acute care hospital, and because department employees are not supervised by any management of the acute care hospital to which they are nominally assigned. Even if it could be established that individual Patient Services-Education Department employees spent a majority of their time working within Research Hospital, for the reasons stated above, I would not include that individual in the Research Hospital bargaining unit. See PECO Energy, Inc., 322 NLRB 1074 (1997) at 1081, fn. 2 (Board finds separate system-wide bargaining units consisting of a utility’s power generation group (PGG) and its nuclear generation group (NGG) appropriate, and finds employees who travel between the PGG, the NGG, and other operating groups of the utility were not part of the system-wide PGG and NGG bargaining units even if the employees spent a majority of their time working at PGG or NGG, because most employees in the traveling department were not more closely affiliated with PGG or with NGG.)

I exclude Patient Services- Education Department employees from the bargaining unit of registered nurses employed in Research Hospital because I find that the Patient Services-Education Department is a separate entity from Research Hospital. Because this department is separate and not a part of Research Hospital, it does not foster unit proliferation within Research Hospital to fail to include the Patient Services-Education Department employees in the Research Hospital bargaining unit. Rather, to include a separate non-acute care department or entity such as the Patient Services-Education Department within Research Hospital is contrary to the Congressional purpose of extending effective bargaining rights to health care employees by avoiding overly-broad bargaining units. I also find the evidence insufficient to establish that a multi-facility bargaining unit consisting of employees of Research Hospital and employees of the Patient Services-Education Department is appropriate because of, inter alia, the lack of employee interchange between the acute care hospital and the Patient Services-Education

Department, separate management, separate geographical work locations, separate skills and work functions, and the bargaining history in the Health Midwest system which appears to exclude employees in this department from acute care hospital bargaining units.

I find it unnecessary to determine with which group or groups of Health Midwest registered nurses or professional employees, if any, it is appropriate to group the Patient Services-Education Department employees. I note that there are many groups of un-represented employees, including registered nurses, within the Health Midwest health care system who have not been grouped with an acute care hospital for the purposes of collective bargaining and with whom it may be appropriate to group with employees of this department.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Supplemental Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by **July 16, 2003**.

470-1733

470-8567

440-1700

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177-9712